

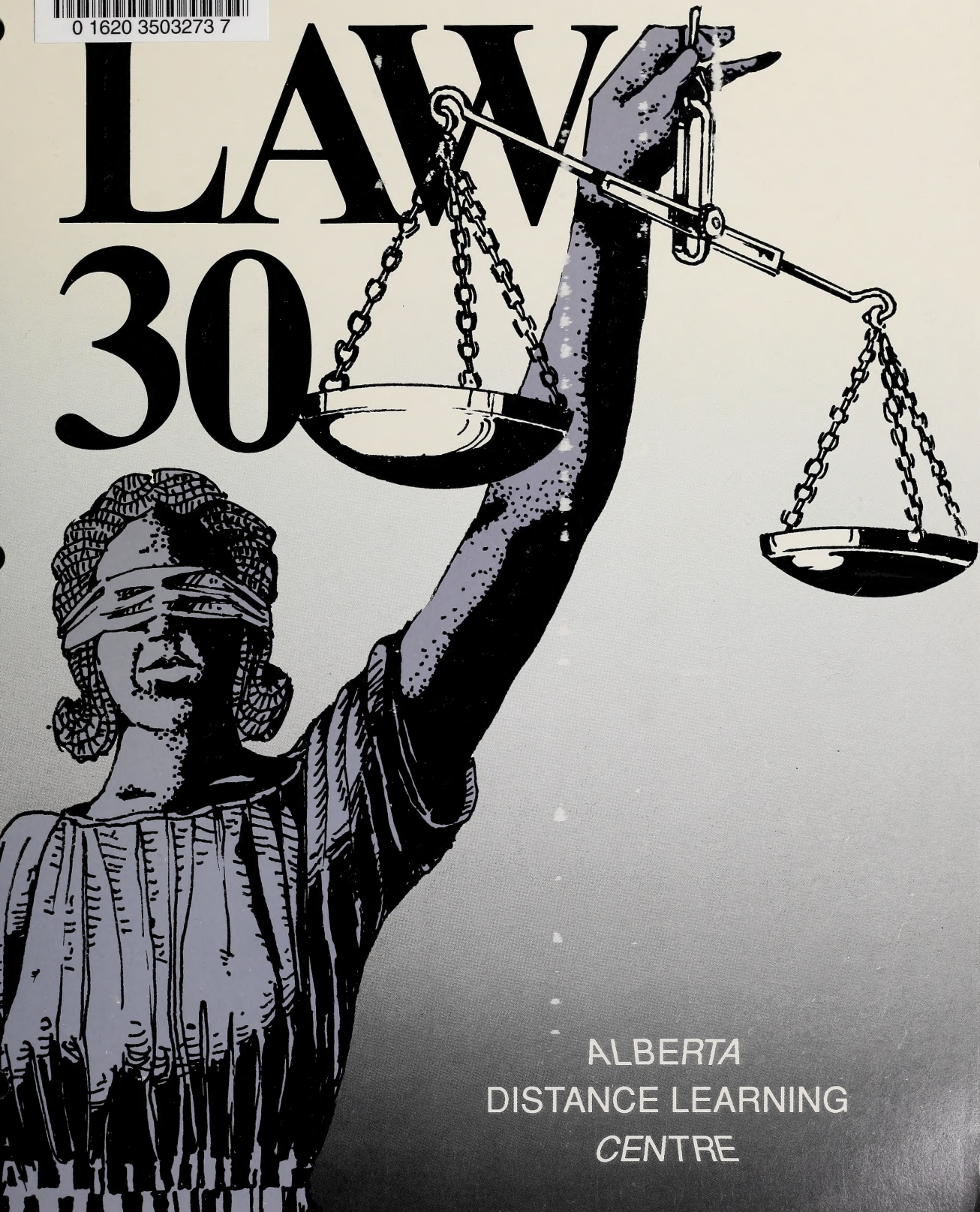
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LAW 30



ALBERTA
DISTANCE LEARNING
CENTRE

INTRODUCTION

- LESSON 1 The Government and Citizen's Rights
 2 Federalism
 3 Provincial and Municipal Government
 4 The Rule of Law

Law 30

- 5 Criminal Law
 6 Offences Involving Motor Vehicles
 7 Offences Against the Individual
 8 Defences

- 9 Tort Law
 10 Negligence
 11 Misrepresentation and Fraud
 12 Property Law

Lessons 1-20

- 13 Contracts and Real Contracts
 14 The Creation of Sale
 15 The Marketplaces
 16 Labour Law

- 17 Consumer Credit
 18 Union Contracts
 19 Employee Welfare Legislation
 20 How Employers May Organize their Business



**Distance
Learning**

Alberta
EDUCATION

Law 30

Lessons 1-20

Law 30
Student Module
Lessons 1-20
Alberta Distance Learning Centre
ISBN No. 0-7741-0581-X

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This Law 30 course is offered for 5 credits. It consists of five modules composed of four lessons each for a total of 20 lessons. Every student must complete at least 18 lessons before the final exam may be written.

EVERY STUDENT MUST WRITE A FINAL TEST TO RECEIVE CREDITS

Do not cut or tear out the pages of this course. Open the book at the centre; then pull it apart at the top, bottom, and centre. Pry out the staples, then transfer the lesson pages to a looseleaf binder or rings.

Law 30 Students

Please check your entire course and list any missing **and/or** blank pages on the green Lesson Record Form of your next Law 30 lesson. Be sure to give the page number and lesson number for each one. We will then send you the necessary pages.

Lesson Gradings

The grading system for lessons is as follows:

A: 80 - 100

B: 65 - 79

C: 50 - 64

D: 40 - 49

F: 0 - 39

Testing and Course Evaluation

1. In order to be recommended for credits in Law 30, you are required to write a supervised test, set by the Alberta Distance Learning Centre before registration expires. This test will constitute 60% of your final grading. The remaining 40% will be based on your lesson grades as well as your teacher's evaluation of your progress and general attitude. Other factors which are considered in evaluation are effort, regularity in the submission of lessons, willingness to follow instructions and to accept and learn from helpful criticism. Appeal papers will be available to students who do not achieve a pass, and whose registration has not expired.

Note: The teacher will use his or her discretion in arriving at a final grading if **there is a substantial difference** between the final test mark and the lesson grades.

2. (a) Classroom students:

Those who are in attendance at a school in Alberta and who are supplementing their school programs by taking one or more correspondence courses.

A student attending school does not submit an application for the final test. Test papers are sent automatically to the principal in January and June for writing before the end of the semester or at the end of August for writing during the first week of September for summer school students. All lessons must be received before a test paper is released.

The principal is in charge of scheduling final tests and all questions about scheduling should be directed to the principal.

If a test is not written before expiry date of registration, the course is considered incomplete for the school year which the student registered.

- (b) Non-classroom students:

Those who are studying exclusively by correspondence, and are not registered in any subjects in an Alberta classroom.

To obtain course credits, non-classroom students must complete all required lessons and write the final test before expiry date of registration. Information about expiry dates is given in the Information Bulletin which a student receives before filing an application for a correspondence course.

The final test application is mailed when Lesson 14 is returned to the student.

We hope that you will enjoy taking this course in Law, and that you will find it useful. We have tried not to make the course too technical, and have included descriptions of actual cases to make the course as interesting as possible.

The exercise section of each lesson will consist of objective type questions, (true-false, multiple choice, completion and short answer questions). In order for you to become accustomed to legal language, you may answer completion-type questions in the exact words of the lesson notes.

In addition to the objective-type questions, you will have in some paragraphs or notes to write which will require some thought on your part and will test your ability to apply the principles presented in the lessons. In some lessons you will be given actual cases to solve by applying the laws studied in the lesson. These should be answered by applying and quoting the point of law involved, which you arrive at by careful reading of the problem and careful consideration of all information given. The solution of these cases is for the most part to be found in the assignment, but occasionally the solution may be found in one of the earlier lessons you have taken.

The Dictionary

When you have occasion to look up a term in the dictionary, use as complete a dictionary as you can find, preferably a big one such as is found in schools and libraries, and always look for the "legal" meaning. Every Law student should form the habit of using a dictionary.

Course Purpose

The Law 30 course is designed to give students a knowledge of the fundamental principles of law that govern an individual's basic rights and to assess the responsibilities these rights impose; to cultivate habits of justice, honesty and impartiality; to develop a respect for and obedience to the law; to assist students in avoiding legal entanglements; and to develop in students the ability to see both sides of a problem, to approach it logically, to use sound judgment, and to express themselves clearly and concisely.

Suggestions for Preparing Lessons in Law 30

- (1) Read over the whole lesson to obtain a general idea of the content.
- (2) Study each section of the lesson intensively.
- (3) Before you start an exercise, be sure that you have read the instructions thoroughly so that you understand them. All problems relate to the province of Alberta only.
- (4) Complete all the exercises to the best of your ability, referring to your study material when necessary.
- (5) Check over your whole lesson carefully. **Is it complete?**
- (6) Send in only those pages that contain exercises for correction. **Do not send in the lesson notes.**
- (7) Complete a Lesson Record Form for each lesson, remembering to place your initials on the line provided, after you have re-read the lesson carefully. When estimating the time spent **count study time** as well as the time you took to complete the exercises and state the time in hours.
- (8) Be sure to follow all instructions on the back of the Lesson Record Form.
- (9) In every "matching" exercise each term should be used **only once**.
- (10) When a lesson is returned to you, study the instructions and comments made by the instructor. (Similar mistakes in successive lessons indicate that you are not giving sufficient attention to the corrections.)
- (11) You will get real value from this course only if you study the material thoroughly enough to understand it and express the ideas for yourself. The mistakes and the incorrect answers you give are the only means your instructor has of knowing what your difficulties are. It is quite permissible when the occasion arises for two students to study and discuss together the material of the lesson, but the written answers to questions must be each student's own independent work.

Instructions Regarding Written Work

- (1) All written work must be done in ink — blue or black.
- (2) Do your rough work on scrap paper. Do not do it in pencil on your lesson and then write over it in ink.
- (3) Answers should be complete and in legible handwriting, **with words spelled correctly**.
- (4) **Avoid using abbreviations**, ditto marks, and the symbol "&" for the conjunction "and" in your written answers. All words should be written in full.

- (5) Paragraph answers should be carefully planned, properly indented, and well constructed.
- (6) Carelessness in these details will result in lower gradings.
- (7) **Remember that every lesson in Law is also a lesson in English.**

DEFINITIONS

Following are definitions of terms which you may come across from time to time. Some of these, as well as many others, are to be found in this course. Study them, and also study carefully the definitions in the lesson notes.

Acquit - To release from a debt, duty, obligation, charge or suspicion of guilt. To find "not guilty."

An acquittal - A decision by the court that the accused is not guilty, and is set free and the charge is cancelled.

An administrator - A person appointed by the court to settle the estate of someone who died without making a will.

An affidavit - A written or printed statement made under oath before a person who is authorized to take oaths.

An agent - A person who has authority to act for another person who thus becomes their principal in all matters relating to the business in which they are engaged. If a person is made manager of a business, that person is an agent with implied authority to do anything which ordinarily may be regarded as falling within the scope of that business.

Antedated - Dated at a time earlier than the actual date.

Arbitrate - To settle a dispute by referring it to a neutral person — a person who does not favour one side or the other.

Arrears - Amounts of money which are due and not paid.

A bailment - The delivery of personal property to another person for a certain purpose with the understanding that at the end of a specified time, or when the purpose has been fulfilled, the property will be returned.

The bear and the bull - A bull is an investor who expects prices to rise. A bear expects them to fall. A *bull market* (think of a bull lifting its horns) is a rising market. A *bear market* (think of a bear going into its cave) is a falling market.

Bigamy - Marrying one while still legally married to another.

A bill of lading - A document signed by a transportation company, such as a railway or a trucking company, and given to the owner of the goods left for shipment. It serves as a receipt for the goods left for shipment, and it contains a contract undertaking to transport the goods to a certain place. It also shows who is the owner of the goods.

Bona Fide - In good faith — genuine — without any evidence of dishonesty or fraud.

A brief - A summary of a client's case drawn up by a lawyer to be used in court.

Bylaws - Regulations passed and adopted by a municipality or some private organization to govern its operations.

A caveat - A notice filed in the Land Titles Office by a person claiming an interest in another person's land. For as long as the caveat remains in force, the caveator's rights are protected as against transfers or mortgages affecting the property. It is important when buying land under an Agreement of Sale for the buyer to register a caveat stating their interest in the land because the seller keeps the title until a specified amount of money is paid, usually by monthly installments.

A caveator - A person who files a caveat.

Consensus ad idem - Agreement of the parties on the same thing.

Contempt of court - Open disrespect for the rules and authority of the court.

Custody - The keeping or guarding of someone or something. It also means imprisonment.

Damages - The money recovered by court action for injury or loss suffered by one person because of the wrongful act of another person. Damages are awarded as compensation only, except in the case of fraud where damages may be awarded as punishment for deceit and deliberately giving the wrong impression.

A deed - Any document or business paper in writing, signed, sealed, delivered and accepted, containing some agreement. This term is usually used in connection with the transfer of land.

Duress - Some unlawful physical force imposed by one party upon a second party which compels the second party to enter into a contract against their will. It may consist of actual or threatened bodily injury or of being unlawfully held a prisoner. It may be aimed at the second party, or it may be directed against their spouse, parent, or child.

Embezzlement - Where employees in the course of their employment fraudently transfer to themselves their employer's money or property with which they were entrusted.

Entry - The lawful admission of a non-immigrant to Canada for a temporary purpose and for a limited time, such as a business trip or a visit to relatives.

Equity - A body of rules that have been created as means of righting certain wrongs for which the law once provided no relief. The rules of equity today are part of the laws of many countries.

Ethical - Following good standards of behavior.

An executor - A person named in a will to carry out the terms of the will.

Executory - Something to be done. An agreement is executory as long as something remains to be done by either party.

Felony - A serious criminal offence which is legally punishable by imprisonment or death.

A fixture - This is usually considered to be an article of personal property attached to a house in such a manner that it becomes a part of the house.

Forgery - The making of, or materially altering, a document, or the writing of another person's signature, with the intention that it may be used as genuine, and fraudulently mislead someone.

Gratuitous - Given freely — without payment or consideration.

Implied - Understood without written or spoken words.

An injunction - A court order ordering a person not to do a specified act. For example, an injunction is sometimes granted when a tenant is using the premises for some purpose not authorized in the lease and to which the landlord objects.

An injury - Any violation of another person's rights for which the law allows court action to recover damages, or specific property, or both.

An investor - A person who puts money into a business, such as buying shares in a company, with a view to obtaining a profit.

Invoke - To call on for help or for protection.

An I.O.U. (I owe you) - A paper having on it the letters I.O.U. with a sum named and a signature. It is generally only a notice of the existence of a debt. It may not be considered the same as a promissory note unless it contains words indicating a promise to pay.

Irrevocable - Something which cannot be legally changed.

Joint tenancy - Two or more persons holding land whereby each has an undivided interest. The land is not divided into parts. If one joint tenant dies the property rights pass to the survivor or survivors. The last one alive gets all the rights to the property.

Jurisdiction - The legal authority of a court to try a case.

Landing - The lawful admission of an immigrant to Canada for permanent residence.

Lapse - To fall or terminate — to come to an end.

Liable - Being legally obliged to pay a sum of money.

Liability - Something you become obligated to pay or do.

Libel - The definition of libel is a wide one. Generally it means publish (write or print) something which seriously injures another person's reputation. If considered sufficiently serious, libel is not only actionable as a tort, but it is also a criminal offence. The statement does not necessarily have to be untrue. It may be libel if the damaging statement doesn't help society even though it is true.

Negligence - The failure to exercise the proper care or attention required by law. Carelessness leading to the injury of some person.

Nuisance - A wrong done to persons by unlawfully disturbing them in the enjoyment of their property.

Oath - A solemn declaration that statements made or to be made are true. Testimony of a witness in court is given under oath.

Option - The right to make a choice.

Option to purchase - The right, usually obtained for a consideration, to buy something within a limited time at a stated price.

Perjury - A false statement made by persons while testifying under oath in court, which they know to be false and which relates to the case before the court. Because so much depends upon the sworn oral evidence of witnesses in court, perjury is considered to be a very serious offence. Perjury is an offence against the administration of law and justice.

Power of attorney - A formal method of appointing an agent. It is a written document which authorizes one person to act for another person (their principal). The agent is authorized to do the things which are specified in the document, such as accepting drafts and issuing cheques in the name of the principal, and signing the principal's name to notes and other specified business papers. The power of attorney dies at the moment of death of the person for whom the agent was acting.

Prejudice - To judge beforehand. A leaning towards one side of a case for some reason other than a conviction of its justice.

Prime - The chief or the best one of the group; first in excellence; of highest quality.

Principal - The chief or head of an organization. A principal is also the person for whom another person acts as an agent.

Principle - A basic truth or a governing law of behavior.

Quantum meruit - The right of people to sue for what they have earned and have not been paid.

Quash - To put an end to or to make void, so that it will have no legal effect.

Quiet possession - The right to hold goods or property free and clear of the claims of all other persons.

Ratification - The later approval of an act that previously had not been binding.

Replevin - A court order for the purpose of recovering possession of personal property wrongfully taken or for the seizure of goods to pay a debt.

A search warrant - A legal document which orders a search by an authorized person for stolen property, or for property which is thought to be hidden by a person who is bankrupt.

Slander - An oral statement (spoken words only) which injures another person's reputation.

Specific performance - The actual performance of a contract, which may be enforced by court order instead of allowing a contract party to pay damages for breach of contract.

Squatter - A person who settles on land belonging to another person without permission.

Statutes - Laws specifically passed by a governing body created for that purpose, such as a provincial legislature or the federal parliament at Ottawa.

The stock market or the stock exchange - A place set aside for the buying and selling of shares in companies. In each country there is a stock exchange in the leading cities. It provides a convenient system of getting buyers and sellers together.

Subrogation - The substitution of one person in place of another.

Subpoena - A court order commanding a person to appear in court and give evidence as a witness concerning some particular case.

A summons - A court order requiring a person to appear in court regarding some specific charge.

A tort - A civil wrong which may be remedied by the payment of damages. A tort is a violation of a person's duty to take care and act responsibly towards other persons. Negligence, trespassing, and libel are examples of torts.

A trust - An interest in property held by one person for the benefit of another person.

Ultra vires - Beyond the authority of a person or beyond the authority of a company.

Undue influence - To get a person to do something by arguing, pleading, or persuading.

Utter - To use a document knowing it to be forged or false; for example, to cash a cheque which bears a forged signature. Uttering is a criminal offence.

A warehouse receipt - A document given by a warehouseman to the owner of goods left in storage. This document contains a description of the goods stored and acknowledges that they are being kept in storage. It contains a contract undertaking to store the goods and to hand them over when required to do so by an authorized person. It also shows who is the owner of the goods.

A warrant - A written or printed document which gives legal authority to do something. It is frequently used in connection with authorizing an officer of the law to arrest some person.

Wear and tear - The loss or damage to which anything is subjected in the course of its use.

Without prejudice - A term sometimes written or printed at the beginning of a business letter which makes the letter confidential and the information in it cannot be used as evidence in court, except with the permission of the writer of the letter.

A writ - A legal document issued by a court to enforce obedience to the orders of the court.

Zoning law - A regulation restricting or permitting certain uses of land in specified areas.

Suggested Reading List

For those students who wish to do additional research into any aspect of law which they may find of particular interest, the following reference sources are recommended. Please note, however, that the Alberta Distance Learning Centre does not lend out these reference materials, nor are they required for students to complete the Law 30 course successfully.

Gibson, D.L. and Murphy, T.G. *All About Law: Exploring the Canadian Legal System*. (Second Edition) Toronto: Wiley Publishers of Canada Ltd., 1984.

Jennings, W.H. and Zuber, T.G. *Canadian Law*. (Third Edition)
Toronto: McGraw-Hill Ryerson Ltd., 1979. (Fourth Edition Pending)

Liepner, M. *Applying the Law*. Toronto: McGraw-Hill Ryerson Ltd.,
1981. (Second Edition Pending)

Spetz, S.N. and Spetz, G.S. *Take Notice: An Introduction to Canadian Law*.
Toronto: Copp Clark Pitman Ltd., 1984.

Jarman, F.E. *In Pursuit of Justice: Issues in Canadian Law*.
Toronto: Wiley Publishers of Canada, 1976.

PLEASE NOTE

If your mark on the final test is 40% or less, **no credit** will be given to your year's work. Your final course mark will then be based on the final test **ONLY**.

**A LESSON RECORD FORM MUST BE COMPLETED FOR EVERY LESSON
SUBMITTED FOR CORRECTION, AS ILLUSTRATED BELOW**

A Lesson Record form with the **correct** label attached **must** be enclosed with **every lesson** submitted for correction, as illustrated below.

Correct use of these labels will ensure prompt processing and grading of your lessons.

The enclosed **Lesson Labels** must be checked for spelling and address details.

Please advise the Alberta Distance Learning Centre promptly of any changes in name, address, school, or any other details and we will issue a revised set of labels. Your file number is permanently assigned and **must** be included on all correspondence with the Alberta Distance Learning Centre. If the proper label and Lesson Record Form is not attached to each lesson as indicated it will delay your lessons being processed and credited to you.

Lesson labels are to be attached to the **lesson record forms** in the space provided for student name and address.

Check carefully to ensure that the **subject name, module number** and **lesson number** on each label corresponds exactly with the lesson you are submitting.

Labels are to be **peeled** off waxed backing paper and **stuck** on the lesson record form.

Only **one** label is to be placed on each lesson.

LESSON RECORD FORM

FOR STUDENT USE ONLY		FOR A.D.L.C. USE ONLY	
Date Lesson Submitted _____	(If label is missing or incorrect) File Number _____	Assigned Teacher: _____	Lesson Grading: _____ Additional Grading E/R/P Code: _____ Mark: _____ Graded by: _____ Assignment Code: _____ Date Lesson Received: _____ Lesson Recorded: _____
Time Spent on Lesson _____	Lesson Number _____		
<div style="border: 1px solid black; padding: 5px;"> <p align="center"><small>Student's Comments and Comments</small></p> <div style="display: flex; align-items: center;"> <div style="flex: 1;"> <p>Lesson Number</p> <p>Module Number (if applicable)</p> <p>Course Name and Number</p> <p>Student File Number</p> <p>Bar Code (same information as above)</p> </div> <div style="flex: 1; text-align: center;"> <p>LESSON LABEL</p> <p><small>Please verify that programmed label is for correct course and lesson</small></p> </div> </div> </div>			
<p><small>Teacher's Comments:</small></p> <p>_____</p> <p align="right"><small>Correspondence Teacher</small></p>			<p>Student name and Address</p> <p>_____</p> <p>When revised labels are received, place the <u>correct</u> new labels on your Lesson Record Forms.</p>

St. Serv. 14-91

DO NOT MARK OR COVER BAR CODING.

CHANGE OF ADDRESS

If the address on your lesson record form differs from the address you supplied on your registration application, please explain. Indicate whether the different address is your home, school, temporary or permanent change of address.

LESSON RECORD FORM

3430 Law 30

Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

(If label is missing
or incorrect)

File Number

Time Spent on Lesson

Lesson Number _____

FOR SCHOOL USE ONLY

Assigned
Teacher: _____

Lesson Grading: _____

Additional Grading
E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

Lesson Recorded _____

Student's Questions and Comments

Apply Lesson Label Here

Name

Address

Postal Code

Please verify that preprinted label is for
correct course and lesson.

Teacher's Comments:

Correspondence Teacher

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

- (1) All pages are numbered and in order, and no paper clips or staples are used.
- (2) All exercises are completed. If not, explain why.
- (3) Your work has been re-read to ensure accuracy in spelling and lesson details.
- (4) The Lesson Record Form is filled out and the correct lesson label is attached.
- (5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do not enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.

Try to mail each lesson as soon as it has been completed.

When you register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

THE GOVERNMENT AND CITIZENS' RIGHTS

Within any group of people living together there must be forces operating to control and order the conduct of individual persons towards one another. In early times it is probable that the most powerful of these forces were the moral standards or religious beliefs prevailing among the members of a community. These standards or beliefs encouraged the settlement of conflicting claims in some customary tribal or religious manner.

As civilization developed and became more complex, and the State, as embodied in the sovereign or governing authority of the community, became more powerful, the State gradually assumed the discharge of many functions which were formerly carried out by moral or religious forces, and today in all nations one of the most important functions of the State is the administration of justice. The primary purpose of this function of the State is that which its name implies - to maintain right or justice, to protect rights, to redress wrongs. The chief instruments which the State uses for this purpose are its courts, which hear and decide the disputes and controversies arising between its citizens or affecting the peace and good order of the State itself.

It is only with the assumption by the State of the administration of justice; and more particularly with the emergence of courts of justice, that it is possible to have what can properly be called law. The term *law* means a general rule or body of rules for human conduct enforceable by the public authority by which it is enacted.

One of the most important features of the preceding definition is the fact that all persons, regardless of their status within our society, are bound by the laws that our society has agreed upon. This applies to all the citizens of Canada, including our judges, lawmakers or members of legislative assemblies, civil servants including the police, and court officials. The fact that everyone within society is bound by these laws, and is obliged to follow them, provides the foundation for the law itself.

Sometimes members of our society are tempted to by-pass the rules; to determine someone's rights or obligations without observing the rule of law. For instance, in the case of a particularly horrible crime, public anger may be so aroused that an individual may be denied a fair trial. After the emotion is over, it may be found that a mistake has been made, and an innocent person has suffered. For this reason it is imperative that no individual's rights should be determined without following the precise rules for trial and punishment that our society has agreed upon. It has often been said that it is better that one guilty person should escape punishment rather than that an innocent person should suffer unjustly. In other words, if the courts and society are not prepared to follow the rules in all cases, then the very foundation of the rules themselves, namely the rule of law, collapses, and in its place comes anarchy (the absence of order).

The law is sometimes accused of being arbitrary and technical, and out of step with modern requirements. In some measure it is inevitable that the law should be open to criticism in this respect. A rule of law is necessarily of a general character, susceptible of being applied to many cases and not merely to one particular case, and when applied to the particular case may seem to be unduly mechanical and rigid.

On the other hand, the necessity of conforming to publicly declared rules or principles tends to secure a reasonable degree of certainty in the decision of a case, and tends to secure a reasonable degree of certainty in the decision of a case, and tends to exclude errors of judgment and the influence of improper motives on the part of individual judges; and one may therefore feel justified in believing that the administration of justice according to law is the best safeguard of our rights. With changing life styles and moral values there will of course arise new situations for which old rules of law do not furnish adequate solutions, but even in this respect the judicial custom of reasoning by analogy to old established principles gives to the law a considerable amount of flexibility. To an increasing extent, also, new situations are being dealt with by legislation, which establishes new rules for the future.

Law Defines Rights and Duties

You will probably always live among other human beings. You have your rights, but your rights must be adjusted so that the rights of others will be equally recognized. In other words, when you live among civilized people, you have many duties as well as many rights. Throughout the study of law you will come across this interplay of rights and duties many times. You will learn to see and understand the other person's point of view because of your knowledge of *the law*. It must be emphasized that no one can know everything about the law. A knowledge of a few basic rules, however, will enable you to avoid many costly errors. It is usually much less troublesome to avoid getting into legal difficulties than to pay for getting out of them.

Classification of Laws

Laws may be broadly classified into natural laws, moral laws, and man-made laws. In your science courses you have heard of the *law of gravitation* and the *law of action and reaction*. These are called natural laws and are important to all of us. The airplane, for example, flies because it conforms to certain natural laws. If the engine should stop however, the law of gravitation would most certainly cause the airplane to come down.

There are other laws that are also important because they pertain to your personal and social behaviour and will affect you throughout your life. These are moral laws, rules of conduct that may not be actual laws. Sometimes they are only rules of good conduct, such as being truthful, being honest in dealing with others, and being considerate of others. While, ordinarily, these moral laws are only rules of good behaviour, they sometimes become the basis of enforceable laws passed by our elected representatives. At one time in the past, for example, there were no laws limiting the rate of interest that could be charged for the loan of money. The only limitation on the lender was moral law. Good moral conduct required the lender not to take unfair advantage of the borrower, but there was no legal regulation. Today, the rate of interest is strictly regulated by legislation. Thus, a former moral rule has become an enforceable man-made law.

The laws governing society have developed over a long period of time and new man-made laws are constantly being developed. New laws will be added or old ones amended as long as civilization continues.

The earliest laws probably came into existence when cave dwellers first began to hunt together. These primitives found that they could protect themselves better and find more game by working in groups. Some rules governing the hunt had to be established. As primitive peoples began to live in larger and larger tribal groups, it became necessary, for their mutual benefit, to develop laws that would permit them to work, hunt, play, and get along together. They quickly learned that one cannot be an outlaw and still be accepted in a social system. An individual must learn to conform to the rules that govern all the people.

You can readily see that the first laws were tribal. As time went on, larger units of government developed. Laws were accordingly expanded to regulate these larger units. Today, in this country, we have several levels of law - your city ordinances or by-laws; your provincial law; and, over all, the federal laws. All of our present laws have their origin in the English common law and the Roman, or civil, law.

The English Common Law

Virtually all laws in Canada are based on the English common law. England, in medieval times, was governed by the feudal system—a system in which the feudal lord reigned supreme within his domain. The feudal lord owned all the land surrounding his castle; this land was worked by serfs, who had few, if any, rights. As the serfs had few rights, there was little need for laws to govern them. The lords settled arguments over rights with their neighboring lords by fighting matters out, so little law was needed.

As the common people began to rise from serfdom to the status of tenant farmers, however, they began to acquire some rights. At this point the need for law began to arise in order that disputes might be settled in accordance with some sensible system. The rights of one tenant might come into conflict with the rights of another. The earliest of these disputes were settled by the feudal lord. He would hear the arguments of each tenant and then make a decision. There was no formal body of law to guide him in this decision-making process. The lord would follow his own reasoning and judgment.

After a time, civil officers having judicial powers (magistrates) were appointed to hear and settle disputes; but still there was no law to guide them. Quite logically, a magistrate might say to himself, "Now I decided a case much like this one several months ago. How did I decide that one?" To refresh his memory, he began to write down his decisions so that he could refer to them. As relations and communications with neighboring magistrates improved, there began an exchange of notes and ideas.

At the same time the central government of the King, which at first was very weak, was becoming stronger; and the King began to establish courts which kept records of their decisions. All this took place before the English parliament was sufficiently well established to draw up a complete set of written laws. Thus, by the time the central government of the King had become strong enough and sufficiently well developed to pass a code of laws, the laws regulating the rights of the common people were already well established by the rulings of the early courts. This we call the law of precedent or the common law. Parliament did not disturb these precedents but merely picked up where they left off. The new laws that were passed by parliament changed or modified the common law as needed to meet new situations or filled needs that were not present in early common law.

When our forefathers founded this country, they brought with them from England these common law principles which formed the basis of the law in force in the new colonies. Our provincial legislatures today pass new legislation called statutes. Some of these statutes are passed to help solve problems that did not exist at common law, such as legislation dealing with motor vehicles, telecommunications, and computer crime. Other statutes may merely bring the common law up to date and adapt it to our present needs.

Roman, or Civil, Law

One of the great contributions of the Roman Empire was a system of laws. Rome conquered almost all of the known civilized world of her day. To administer this great empire many laws were needed. Through the influence of Emperor Justinian and other emperors who followed, a complete code of laws was drawn up. An attempt was made in this code to govern the rights of the Romans and their subjects. Virtually all the laws of Europe have been built around the Roman Code. Colonists settling in the New World brought the code of laws of the particular European nation from which they came. Thus, all the Latin American countries follow the Roman Code. In this country, the civil laws of Quebec are based on it because Quebec was first settled by France which had developed its legal system after the pattern set by the Roman Code.

To illustrate the difference between the development of the English common law and the codified Roman law, consider how the game of basketball developed. A gym teacher hung up a peach basket and had two teams of boys try to throw a ball into it. There were no formal rules. Each team simply tried to get the ball and throw it into the basket. You can imagine that a referee was soon needed. The referee began to make some decisions as to how the game should be played so that no one would get hurt. The next time the boys played the game, the referee would recall his decision of the day before and would also make new decisions as problems developed. As the new game became popular, a set of formal rules developed along with it. Nearly every year, these rules undergo some changes. That is similar to the history of the development of the English common law. If, on the other hand, before the game had ever been played, the gym instructor had proceeded to work out a set of formal rules, we would have a situation similar to the origin of the Roman Code.

It can be seen that, even if the gym instructor had worked out the formal rules in detail in advance, some modifications would have to be made as the game developed. That has been true of all codified law. In like manner, even though the first rules of basketball were made on the spot, they were written down later and became the rules of the game. The same has been true of the common law. Today, much of the common law has been rewritten in the form of codified laws passed by our provincial and federal legislatures.

Statute Law

Statutes are laws specifically passed by a governing body created for that purpose. Thus, laws passed by the Canadian Parliament, the provincial legislatures, or local city councils can all be called statute laws. These laws consist of additions to or modifications of the original common law to meet modern situations. Also, modern living raises many problems that were never contemplated by the common law; so, much new legislation is necessary.

A statute overrides all of the common law dealing with the same point. One need only refer to the statute and not to reports of cases decided before the statute was passed. Nevertheless, the common law still constitutes the bulk of our private law.

Civil, or Private, Law

The law that affects the regulation of the rights and duties of individuals is called civil, or private, law because individuals only—not the state—are involved in any court action taken.

Note that the term civil law is used to indicate two different classifications. In worldwide use the term indicates codified law, or Roman law, as contrasted with English common law. Within this country it is used as another name for private law as contrasted with public law.

Public Law

The branch of law that pertains to the relationship between the state and private citizens is known as public law. The term *state* is used to indicate any unit of government - local, provincial, or federal. Public law is usually classified as criminal law or constitutional law.

- (a) Criminal Law - all levels of government pass laws that deal with the health, safety, good conduct, and preservation of society. If individuals violate any of these laws, they are guilty of a crime and may be prosecuted. An act may be both a crime and a private wrong. For example, Phil Evans, in violation of the Alberta Highway Traffic Act, was driving his car at 100 kilometres per hour on the city streets. While so doing, he ran into Mary Rogers' car and seriously damaged it. Phil would find himself as the defendant in two court actions - one brought by the state for violating the Highway Traffic Act, which is part of the public law. In the second action Mary would be suing for the damages done to her automobile, which would come under private law.
- (b) Constitutional Law - is the branch of law that deals with the organization of the government and the exercise of its powers. Our constitution sets forth the fundamental rights of citizens, defines the limits within which the federal and the provincial governments may pass laws, and describes the functions of the various branches and divisions of our national government.

The Canadian Constitution

A *Constitution* can be defined as the fundamental law of the state. It is the embodiment of the rules which determine the nature and manner of selection of the government and the distribution and exercise of governmental power.

As the Fathers of Confederation worked out a federal system for Canada, they were conscious of problems which existed in the United States and which encouraged civil strife there. Under the American system there was a weak central government, and there were strong state governments. The federal government at Washington lacked the power to control many state actions and some of the states were almost sovereign unto themselves. For example, the southern states looked upon federal laws, in particular the anti-slavery bill, as an infringement on state rights and state sovereignty. This was one of the causes of the civil war. The Canadian Fathers of Confederation therefore attempted to create a federal system with a strong central government and weak provincial governments whose jurisdiction was intended to extend to purely provincial and local matters.

The constitution of Canada, which had its beginning in 1867, combines in a set of rules the creation and operation of the machinery or institutions of government. A written document, the British North America Act of 1867, contains a substantial portion of Canada's constitution and this Act, with its various amendments, is popularly held to be the Canadian Constitution.

There is, however, another more important part which appears in various guises including well-established usages and conventions found in the unwritten provisions of the constitution. First, there are elements of our constitution which we have inherited. The preamble to the B.N.A. Act states the desire of the four original provinces (Ontario, Quebec, Nova Scotia and New Brunswick) "to be federally united in One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in principle to that of the United Kingdom..." Such great constitutional instruments as the Magna Carta, the Bill of Rights, and the Habeas Corpus Act therefore form part of our constitution, as do many British customs and conventions relating to the administration of government.

Similarly, by virtue of section 129 of the B.N.A. Act, we inherited the legal systems (both civil and common law) whereby the rights of the citizen can be asserted. Second, the B.N.A. Act does not contain the constitutions of the individual provinces and territories, with the exception of Ontario and Quebec. These are found in pre-Confederation colonial charters or in the Imperial or Federal statutes by which the particular province or territory was incorporated. Finally, there are a number of post-Confederation federal or provincial statutes which regulate the governmental process.

Distribution of Federal and Provincial Powers

The federal structure of Canadian government rests on the explicit written provisions of the B.N.A. Act. Apart from the creation of the federal union, the dominant feature of the Act and indeed of the Canadian federation was the distribution of powers between the central or federal government and the provincial governments. In brief, the primary purpose was to grant to the Parliament of Canada legislative jurisdiction over all subjects of general or common interest, while giving to the provincial legislatures jurisdiction over all matters of local or particular interest. Sections 91 and 92 of the B.N.A. Act are particularly important in this regard:

THE BRITISH NORTH AMERICA ACT, 1867

Section 91

Legislative Authority of Parliament of Canada

91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislature of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of the Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated, that is to say:

1. The Public Debt and Property;
2. The regulation of Trade and Commerce;
3. The raising of money by any mode or system of taxation;
4. The borrowing of money on the Public Credit;
5. Postal Service;
6. The Census and Statistics;
7. Militia, Military and Naval Service, and Defence;
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada;
9. Beacons, Buoys, Lighthouses and Sable Island;
10. Navigation and Shipping;
11. Quarantine and the establishment and maintenance of Marine Hospitals;
12. Sea Coast and Inland Fisheries;
13. Ferries between a Province and any British or Foreign country, or between two Provinces;
14. Currency and Coinage;
15. Banking, Incorporation of Banks, and the issue of Paper Money;
16. Savings Banks;
17. Weights and Measures;
18. Bills of Exchange and Promissory Notes;
19. Interest;
20. Legal Tender;
21. Bankruptcy and Involency;
22. Patents of Inventions and Discovery;
23. Copyrights;
24. Indians and Lands reserved for the Indians;
25. Naturalization and Aliens;
26. Marriage and Divorce;
27. The Criminal Law, except the Constitution of the Courts of Criminal Jurisdiction but including the Procedure in Criminal Matters;
28. The establishment, maintenance, and management of Penitentiaries;
29. Such Classes of subjects as are expressly excepted in the enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any matter coming within any of the Classes of Subjects enumerated in this section shall not be deemed to come within the Class of matters of a local or private nature comprising in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Province.

Section 92

Subjects of Exclusive Provincial Legislation

92. In each Province the Legislature may exclusively make laws in relation to matters coming within the Classes of Subjects next hereinafter enumerated, that is to say:
 - .1 The amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor;
 2. Direct Taxation within the Province in order to raise a Revenue for Provincial Purposes;
 3. The borrowing of money on the sole credit of the Province;
 4. The establishment and tenure of Provincial Offices, and the appointment and payment of Provincial Officers;
 5. The management and sale of the Public Lands belonging to the Province, and of the timber and wood thereon;
 6. The establishment, maintenance, and management of public and reformatory prisons in and for the Province;
 7. The establishment, maintenance and management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Provinces, other than Marine Hospitals;
 8. Municipal Institutions in the Province;
 9. Shop, Saloon, Tavern, Auctioneer, and other Licenses, in order to raise a Revenue for Provincial, Local, or Municipal purposes;
 10. Local works and undertakings, other than such as are of the following classes:
 - (a) Lines of Steam and other Ships, Railways, Canals, Telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province,
 - (b) Lines of Steam Ships between the Provinces and any British or Foreign Country,
 - (c) Such works as although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces;
 11. The Incorporation of Companies with Provincial Objects;
 12. The Solemnization of Marriage in the Province;
 13. Property and Civil rights in the Province;
 14. The Administration of Justice in the Province, including the constitution, maintenance, and organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including procedure in civil matters in the Courts;
 15. The imposition of punishment by fine, penalty, or imprisonment for enforcing any Law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this Section;
 16. Generally all matters of a merely local or private nature in the Province.

In theory each legislature, whether federal or provincial, has absolute power within its fields of jurisdiction. The difficulty is that problems faced by governments refuse to divide themselves into neat, clear-cut subjects for the convenience of legislatures. For example, which government can regulate the grading and labelling of beef? Under the B.N.A. Act the federal government was given jurisdiction over trade and commerce, and the provinces were given jurisdiction over property and civil rights. The right to grade meat as A quality or to brand it unfit for sale is related to both of these fields. The artificial divisions caused difficulty within a few years of Confederation, and as the complexity of government and its various activities steadily increased, so did the difficulties surrounding the interpretations of sections 91 and 92.

When considering the British North America Act, the political, social and economic philosophy of Canadian and British society in the nineteenth century should also be taken into account. The underlying principle was the doctrine of *laissez-faire* - that the least amount of government intervention in economic and social affairs was the best amount. The modern concept of social legislation and the welfare state was only just beginning to take form.

In these circumstances, the Fathers of Confederation did not conceive of the need for the vast financial resources which would be required to support the social legislation of the twentieth century. For example, education, which is within the jurisdiction of the provinces, accounts for almost twenty-five percent of the Alberta budget. The right and obligation to provide education and other forms of social legislation was vested in the provinces; yet, because they had not foreseen the need for huge sums expended on social legislation today, the Fathers of Confederation permitted the provinces the power to raise only the monies necessary for local matters.

These circumstances created the problem provincial governments face today. They are required to spend vast sums on social legislation, yet their power to raise money for this purpose is extremely limited. This dilemma has led to many Federal-Provincial conferences on taxation, which are frequently a source of aggravation in Dominion-Provincial affairs. The provincial governments are very reluctant to reduce their legislative powers by permitting the federal government to pass laws for welfare purposes. Yet it is the federal government which holds the purse strings. On the other hand, the federal government is reluctant to become a mere tax collector for the provinces.

It should also be borne in mind that if the federal government was given jurisdiction over social legislation, including the power to raise money for this purpose, the wealthier provinces such as Alberta would object on the following grounds: a considerably greater amount of federal taxation money is raised in the province of Alberta than is proportionate to its population.

In distributing the money raised by taxation, the federal government does not spend the same amount in each province which it raises there. In effect, therefore, the wealthier provinces are to some extent subsidizing the others. For this reason Alberta, Ontario and British Columbia, would much prefer to collect their own taxes and pay for their own social legislation, rather than have the federal government collect the taxes and redistribute them.

Since the cost of providing social services continues to increase rapidly, and provincial ability to raise funds for such purposes has not correspondingly increased, there is a need for substantial revisions in the British North America Act. However, despite these inherent difficulties the constitution has worked surprisingly well. Many aspects of the B.N.A. Act show great wisdom and have caused little or no trouble.

To review, the main fields of jurisdiction given to the federal government are: trade and commerce, postal service, national defence, shipping, fisheries, currency, banking, bankruptcy, patents copyright, marriage and divorce, and criminal law. Those given to the provinces include: municipal institutions, incorporation of companies with provincial objects, solemnization of marriage, property and civil rights, administration of justice, and "generally all matters of a merely local or private nature." In addition, the provinces were given exclusive jurisdiction over education.

Amending the Constitution

In 1867 Canada became a self-governing nation when the British Parliament passed the British North America Act. Since the Act was passed in England, no Canadian legislature had the right to change its provisions, for under the B.N.A. Act Canada was not given the right of amending the Act itself. However, both the Parliament of Canada and the provincial legislatures were given legislative jurisdiction with respect to some matters relating to government. Thus, for example, the Parliament of Canada was given jurisdiction with respect to the establishment of electoral districts and election laws and the privileges and immunities of members of the House of Commons and the Senate, and each provincial legislature was empowered to amend the constitution of the province except as regards the office of Lieutenant-Governor.

Amendments to the B.N.A. Act have been made on several occasions since 1867 by the British Parliament. In one such amendment passed in 1949, the authority of the Parliament of Canada to legislate with respect to constitutional matters was considerably enlarged and it could then amend the Constitution of Canada except as regards the legislative authority of the provinces, the rights and privileges of provincial legislatures of governments, schools, the use of the English or the French language, and the duration of the House of Commons other than in time of real or apprehended war, invasion or insurrection.

The search for a satisfactory amending procedure within Canada which satisfied the need to safeguard basic provincial and minority rights and yet possesses sufficient flexibility to ensure that the Constitution could be altered to meet changing circumstances had been the subject of repeated consideration in the Parliament of Canada as well as in numerous federal-provincial conferences and meetings.

Finally, in the late fall of 1981, there was agreement between the federal government and the provinces and request was made to the British Parliament to amend the B.N.A. Act to permit self-amendment by Canadians. This approval was granted in March of 1982 with the passage of the Constitution Act and the related Canadian Charter of Rights and Freedoms. As a result, Canada is now a completely autonomous state.

However, despite this name change (on April 17, 1982 the British North America Act was officially renamed the Constitution Act), the B.N.A. Act is very much in

evidence. Its role is the same as it was in 1867, although the new Constitution contains a number of clauses specifically inserted to amend some of the B.N.A. Act's shortcomings. As it always has, the B.N.A. Act (now the Constitution Act) continues to establish Canada as a federal state, briefly describes its institutions and their functions, sets out rules that define the rights of government and citizens and, of paramount concern, divides the power to make laws between the federal and provincial levels of government.

Civil Liberties

In a federal state such as Canada, concern with civil liberties is bound up with the question of the distribution of power between the federal Parliament and the provincial legislatures. Who can confer the *rights* or delimit the *freedoms*?

When the B.N.A. Act was passed, few restrictions were imposed on the various legislatures and on Parliament providing they acted within their respective jurisdictions as set out mainly in sections 91 and 92. No Bill of Rights was included, and there was no reference to civil liberties. The main restrictions were those thought necessary for the protection of some minority and cultural rights. Thus, there are provisions guaranteeing the use of the English and French languages (section 133) and one proclaiming the right to separate schools (section 93), but neither of these sections applies to all parts of Canada. There are other provisions ensuring an annual session of Parliament (section 20) and representation by population (sections 51, 51A, and 52). An independent judiciary is provided for in section 99. In addition, there are certain economic restrictions necessary to preserve, on the one hand, national economic unity, and on the other, autonomy of the various units.

It is difficult to ascertain why there was no discussion of civil liberties at the time of Confederation. Possibly this was a result of a reaction to the American experience with the Civil War arising out of controversy over states rights and the rights of certain inhabitants of the United States. It was more probably the result of the belief of the Fathers of Confederation that the new country they were creating was a successor to the heritage of English constitutional law.

The Magna Carta, among others, and the English common law, with its emphasis on the rights of free men (which could not be taken away except by the law of the land as found by the courts, or as passed by a sovereign and popularly elected Parliament) and its protection for the individual through instruments such as the Habeas Corpus Act, were all intended to be incorporated through the preamble to the B.N.A. Act which stated that the Constitution was to be similar in principle to that of the United Kingdom.

Although practically all government legislation protects the rights of citizens in one way or another, there are some statutes, both federal and provincial, which are designed solely to safeguard basic human rights. We will now look at some of these.

The Canadian Bill of Rights

An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms.

(Assented to 10th August, 1960)

Affirming also that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

And being desirous of enshrining these principles and the human rights and fundamental freedoms derived from them, in a Bill of Rights which shall reflect the respect of Parliament for its constitutional authority and which shall ensure the protection of these rights and freedoms in Canada:

THEREFORE Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,
 - (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
 - (b) the right of the individual to equality before the law and the protection of the law;
 - (c) freedom of religion;
 - (d) freedom of speech;
 - (e) freedom of assembly and association; and
 - (f) freedom of the press.
2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to
 - (a) authorize or effect the arbitrary detention, imprisonment or exile of any person;
 - (b) impose or authorize the imposition of cruel and unusual treatment or punishment;
 - (c) deprive a person who has been arrested or detained
 - (i) of the right to be informed promptly of the reason for his arrest or detention,
 - (ii) of the right to retain and instruct counsel without delay, or
 - (iii) of the remedy by way of *habeas corpus* for the determination of the validity of his detention and for his release if the detention is not lawful;

- (d) authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied counsel, protection against self incrimination or other constitutional safeguards;
 - (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
 - (f) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause; or
 - (g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted.
3. The Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every proposed regulation submitted in draft form to the Clerk of the Privy Council pursuant to the *Regulations Act* and every Bill introduced in or presented to the House of Commons, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of this Part and he shall report any such inconsistency to the House of Commons at the first convenient opportunity.

Freedom of Speech and of the Press

Two of the fundamental freedoms acknowledged in the Canadian Bill of Rights are freedom of speech and freedom of the press. These are of the utmost importance in any country, for without these freedoms, the democratic system could not survive. Freedom of speech is the freedom of individuals to state their honest opinion about any matter of general importance. It is a right which is common to all citizens. Each of us is free to state fearlessly to anyone our real opinion, honestly held upon any matter of public interest. Newspapers and private citizens alike face one legal restriction - they may be prosecuted or sued in the courts if their words are thought to be libellous, slanderous, seditious, obscene, or blasphemous. Exactly how a court or jury will interpret these words is, however, sometimes hard to judge.

The Right of Assembly

The right of citizens to assemble peaceably and to hold public meetings dates as far back as Henry VIII's reign at the end of the 15th century. This right does not, however, permit people to meet with intent to commit a crime or start a riot or commit some other breach of the peace. Since genuine free discussion should be encouraged in a democracy, any interference with lawful public meetings can be justified only for the most serious reasons. Thus in a democracy we allow public meetings even by such groups as the Communists, so long as they are peaceable. To deny such minority groups this right would be an outright denial of our civil liberties and of democratic principles.

Freedom of Free Association

One of the most important of all democratic rights is the right of free association. It means the right of people to form all kinds of voluntary organizations for purposes in which they are interested without interference by government. There are literally thousands of them throughout the country, and of many kinds: churches; charitable organizations; organizations interested in music, art, sports, education; service clubs; discussion clubs; trade unions; farmers' organizations; co-operatives; political parties; and so on. Many of these associations do work of the greatest importance in education, religion, recreation, the relief of distress, the organization of public opinion, and so forth. We take such voluntary associations for granted, but in dictatorships such widespread use of them is unknown and would be regarded as highly dangerous. In democratic countries, on the other hand, unless such voluntary organizations are formed with the idea of breaking or defying the law, it is the duty of the government to interfere as little as possible with them and, indeed, in many cases to protect and work with them.

Freedom of Religion

Freedom of religion and of worship is a freedom that is quite modern in concept and certainly not widely found around the world. Generally speaking, it means that all persons should be free to worship God according to the dictates of their own conscience. Consequently, citizens have the right to choose their own religion or no religion at all. Freedom of religion also means that all religions are equal before the law.

Freedom from Discrimination

Closely allied to the preceding is the freedom from discrimination whether on account of race, religion, color, or sex. As we all know, such discrimination is still with us in various forms, but progress has been made towards ending it (see the Individual's Rights Protection Act discussed later in this lesson).

Such laws are a help in maintaining freedoms such as the freedom of religion and freedom from discrimination, but the real guarantee of these rights is the support of them by the public. Many countries have fine-sounding guarantees in their laws and constitutions which are constantly ignored because the government and people do not support them. And those freedoms that assert the rights of minorities are particularly likely to be neglected.

The Charter of Rights and Freedoms

Canadians should be aware that there was no constitutional guarantee of civil rights before the passage of the Constitution Act in 1982. The aforementioned Bill of Rights was merely a statute of the Canadian Parliament which could be amended or revoked by Parliament. The Bill of Rights was and still is (as it has not been repealed) an eloquent statement of civil rights, but it cannot supercede other federal legislation and it doesn't apply to provincial legislation in any way.

Our new Constitution, which includes the Charter of Rights and Freedoms, is said to be "entrenched" because it cannot be repealed or amended by the federal government or any of the provincial legislatures. In other words, the Constitution is the supreme law of the land, and any other law that is inconsistent with it has "no force or effect." However, section 33 of the Constitution does permit the federal parliament or a province to opt out of the fundamental rights and freedoms in the Charter. A legislature may do this by declaring in a particular piece of legislation that it shall operate "notwithstanding" one of the guaranteed rights or freedoms in the Charter. Such an opting out provision is valid for a five year period with a renewal for a further five years.

The Charter enshrines seven categories of rights and freedoms in the new Constitution.

1. Fundamental Freedoms - These are the freedoms of conscience, religion, thought, belief, opinion, expression, association and peaceable assembly, as well as freedom of the press.
2. Democratic Rights - These are the right to vote and stand for elected office and the guarantee of regular democratic elections.
3. Mobility Rights - These are the right to live and work in any part of Canada.
4. Legal Rights - These are the right to life, liberty and security of the person; the right to be secure against unreasonable search and seizure; the right not to be arbitrarily detained or imprisoned; the right upon arrest to be told the reason, to retain legal counsel and to challenge detainment. Furthermore, the rules for a fair trial are listed.
5. Equality Rights - These rights bar discrimination based on race, national or ethnic origin, color, religion, sex, age, or mental or physical disability.
6. Language Rights - English and French are designated the official languages in all federal institutions and in the province of New Brunswick. Bilingual provisions applying to Quebec and Manitoba also are sanctioned.
7. Minority Language Educational Rights - This sets out a formula to determine who has the right to be educated in French or English by using a "where numbers warrant" test.

It is important to emphasize that not all of the Charter is subject to "notwithstanding" legislation as stipulated in section 33. Only three parts - Fundamental Freedoms, Legal Rights and Equality Rights - come under the class of guarantees that may be avoided. The rest are binding on all levels of government and cannot be altered.

CONSTITUTION ACT, 1982
Part I
Canadian Charter of Rights and Freedoms

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
2. Everyone has the following fundamental freedoms:
 - (a) freedom of conscience and religion;
 - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
 - (c) freedom of peaceful assembly; and
 - (d) freedom of association.
3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.
4.
 - (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.
 - (2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.
5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.
6.
 - (1) Every citizen of Canada has the right to enter, remain in and leave Canada.
 - (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right
 - (a) to move to and take up residence in any province; and
 - (b) to pursue the gaining of a livelihood in any province.
 - (3) The rights specified in subsection (2) are subject to
 - (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
 - (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

- (4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.
- 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
- 8. Everyone has the right to be secure against unreasonable search or seizure.
- 9. Everyone has the right not to be arbitrarily detained or imprisoned.
- 10. Everyone has the right on arrest or detention
 - (a) to be informed promptly of the reasons therefore;
 - (b) to retain and instruct counsel without delay and to be informed of that right; and
 - (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.
- 11. Any person charged with an offence has the right
 - (a) to be informed without unreasonable delay of the specific offence;
 - (b) to be tried within a reasonable time;
 - (c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
 - (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
 - (e) not to be denied reasonable bail without just cause;
 - (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
 - (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
 - (h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
 - (i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.
- 12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.
14. A party of witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.
15.
 - (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
 - (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
16.
 - (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.
 - (2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.
 - (3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.
17.
 - (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.
 - (2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.
18.
 - (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.
 - (2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.
- (2) Either English or French may be used by any person in, or in any pleading or process issuing from, any court of New Brunswick.
20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where
 - (a) there is a significant demand for communications with and services from that office in such language; or
 - (b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.
- (2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.
21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.
22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.
23. (1) Citizens of Canada
 - (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
 - (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.
- (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.
- (3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

- (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision of them out of public funds of minority language instruction; and
 - (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.
- 24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.
- (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.
- 25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including
 - (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
 - (b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.
- 26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.
- 27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.
- 28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.
- 29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.
- 30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.
- 31. Nothing in this Charter extends the legislative powers of any body or authority.

32. (1) This Charter applies
- (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
 - (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.
- (2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.
33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.
- (2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.
 - (3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.
 - (4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1).
 - (5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

We will now examine some specific areas of the Charter which are of general interest to all Canadians.

Equality Rights Under the Charter

Section 15(1) declares that every individual is equal before and under the law. Unlike some of the other sections of the Charter, which extend rights to Canadian citizens only (s.23), or permanent residents (s.6(2)), Section 15(1) states that every individual is equal before and under the law.

Section 15(1) goes on to state that everyone has the right to the equal protection and equal benefit of the law without discrimination. This is, in essence, an anti-discrimination provision. The last part of s.15(1) sets out particular forms of discrimination that are viewed as offensive. These are race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

It should be stressed that all laws that differentiate between individuals will not automatically violate Section 15. For example, the Income Tax Act creates categories of taxpayers - the single taxpayer, the married taxpayer, the taxpayer with dependents, etc. - and then treats the various categories differently in relation to exemptions, deductions, etc. However, this differential treatment is not necessarily offensive. It is only where the basis for the differential treatment appears to reflect a preference based on prejudice, or some other socially unacceptable basis, that the courts should invalidate the differential legislative classification.

Section 15(2) gives constitutional recognition to "affirmative action" programs. If a government established a program or policy under which it wishes to assist a previously disadvantaged group, such as a program hiring more natives, or women, or blacks in the civil service, then clearly, under section 15(1), it could be accused of denying equal benefit of the law to those people applying for jobs, but not included in the group to be assisted.

This has, in fact, been the experience in the United States. For example, where the federal government in the States has required a certain percentage of blacks to be hired by an employer before granting a contract to that employer, whites who might otherwise have been employed argue they have been denied equal benefit of the law because of their race. In Canada, our legislators have chosen to avoid this type of problem by giving constitutional recognition to the need to assist certain disadvantaged groups in our society. It will be left for the court to decide, if and when any affirmative action program is challenged, whether or not the object of the program is truly the improvement of conditions of a disadvantaged group or individual, or whether the program constitutes an offensive form of discrimination contrary to the intent of Section 15 taken as a whole.

Official Language Rights

Sections 16 through 22 of the Charter of Rights and Freedoms contain a number of provisions concerning the official languages of Canada and both their permitted and required usage. In addition, while English and French are given pre-eminence for official purposes, other minority languages are implicitly recognized in Section 27 of the Charter.

Although the term "official languages" is relatively new in Canadian constitutional law, we have had, continuously since 1867, some provisions respecting the use of English and French. Section 133 of the British North America Act allows members of the Federal Parliament and of the Quebec National Assembly the choice of using English or French in the debates of those bodies. Further, either language may be used in all federal courts and in any and all courts in the Province of Quebec. Also, most of the officially published records of proceedings in Parliament and in the Quebec National Assembly are required to be published in both languages.

Since 1960, the Canadian Bill of Rights has provided that any person who does not understand or speak the language of proceedings before a court, commission board, or other tribunal where he is involved, or a party, has a right to the assistance of an interpreter. This latter protection is also included in the Charter, in Section 14, with the additional guarantee that an interpreter will be provided for a deaf person in the same circumstances. While the Canadian Bill of Rights guarantee applies only at the federal level, the Charter, according to Section 32, applies at all levels. It is important to note that this guarantee is not restricted to just the official languages.

In 1969 parliament enacted the Official Languages Act. In large part this Act was a parliamentary declaration that, for the purposes of the Government and Parliament of Canada, English and French are the official languages of Canada and are equal in status. The Act also established a Federal Bilingual Districts Board with certain authority where one of these two languages was a minority, but still comprised ten percent or more of the population of a district. In those districts federal services were to be available in both languages. Also by this Act, federal publications and notices were generally required to be in both languages, as were reports of Federal

Court decisions. Finally, a Commissioner of Official Languages was provided to maintain watch over the area of language rights and to make recommendations to government and others. It should be noted in all of this that the Official Languages Act applies only to the federal government and has no implication whatsoever for provincial governments or affairs.

The Canadian Charter of Rights and Freedoms merely enshrines provisions which already existed either in the Official Languages Act of Canada or in Section 133 of the British North America Act.

Sections 21 and 22 of the Charter merely declare the continuation of existing rights, privileges, or obligations.

Section 23 relates to minority language educational rights. It is particularly important to note that the group which is declared to have the right is narrowly defined. The right is enjoyed only by Canadian citizens, and can be invoked only by parents, and not their children. As well, the parents, themselves, must have as their native tongue (to paraphrase) the minority official language of the province in which they reside. Further, citizens who have one child who has received schooling in this country in English or French have the right to have all their children receive instruction in the same language through the secondary level.

All of this is subject to the "where numbers warrant" test found in Section 23(3). It should be noted that this sub-section creates two levels of entitlement: Where numbers warrant, instruction is to be provided out of public funds; and where numbers warrant that instruction is to take place in facilities provided out of public funds.

It is the courts who will be called upon to determine whether "numbers warrant" the provision of minority language educational instruction or facilities in particular localities. This will be accomplished through Section 24(1) of the Charter, which provides that a court may order "such remedy as the court considers appropriate and just in the circumstances."

Freedom of Conscience and Religion

The concept of freedom denotes an area of human activity which is free from specific legal regulation. Within this area one is free to either act or do nothing, as one wishes. Freedom of conscience and religion, therefore, embrace the right to worship or not to worship according to the dictates of one's conscience, and to be free from any restraint or interference in such worship. It also embraces the right to do, or resist from doing, any act for conscience's sake, the doing or forbearing of which is not prejudicial to the common good.

The above does not mean that freedom of conscience and religion is without limitations. Like all other fundamental freedoms recognized by the Charter, it is subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." This limitation is found in Section 1 of the Charter.

In cases decided under the Canadian Bill of Rights, which contained no such limitation, the courts stated that religious freedom did not entail freedom from conformity to the law. One could not, under the guise of religion, indulge in acts offensive to the law and morality alike. Freedom of religion will, therefore, not relieve an individual from obedience to a general law of society which is not aimed at the promotion or restriction of religious beliefs. For example, it is unlikely that individuals will be able to escape the payment of income taxes and be allowed to smoke marijuana on the basis that the former is against their conscience or religion while the latter is part of their religion.

The Right to be Secure Against Unreasonable Search and Seizure

Section 8 of the Charter states:

Everyone has the right to be secure against unreasonable search and seizure.

Section 24 states:

Where, in proceedings... (to decide if a person has been denied rights guaranteed by the Charter)...a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

The effect of these two sections is that if a person claims that police made an unreasonable search, a court will first decide whether the search was done with a reasonable cause and in a reasonable way. If a court decides that the search was unreasonable, any evidence turned up by the search will not be allowed as evidence in court if to do so would bring the administration of justice into disrepute.

In other words, the evidence would not be allowed if the search was so unfair and unreasonable that the average Canadian might, upon hearing of the search, think very little of and lose respect for the Canadian system of justice. In order to keep the evidence out of court both sections of the Charter must apply: (1) the search must be unreasonable; and (2) to allow such evidence in court might make Canadians lose respect for the law.

By what is an "unreasonable search and seizure"? When will the admission of evidence "bring the administration of justice into disrepute"? In the cases described here our courts are answering these questions.

In a British Columbia case a woman was charged with possession of cocaine. The woman was sitting in a bar when she was grabbed by a police officer. The officer had reasonable grounds to believe that she had cocaine because of information he had received earlier. The officer, believing that the woman was hiding the drugs in her mouth, put the woman in a choke hold and forced open her mouth. No drugs were found in her mouth, but a later search turned up the cocaine in the woman's purse.

The Court said that while the choking incident was unreasonable, the following search of the purse was not unreasonable. In fact, the search of the purse, which was seen separate from the choking incident, was perfectly legal. Since the cocaine was found through a legal search, the Court decided that the evidence should be allowed at trial.

In another case the issue was whether the taking of fingerprints by police for identification purposes amounted to an unreasonable search and seizure. The Ontario Supreme Court decided that the taking of fingerprints did not amount to an unreasonable search and seizure.

The Court stated that it doubted whether the taking of fingerprints was a search and seizure at all. A search and seizure usually involves the taking of something tangible from a person.

But, according to the Court, even if the taking of fingerprints, which is allowed by the Criminal Code, is a search and seizure, it is not an unreasonable one. In deciding whether a search and seizure is unreasonable it is necessary to compare and balance the individual's right to be free from a search in the circumstances with the public's need to identify criminals. The court said that fingerprinting may help to identify a person in custody or connect an accused person with a crime. Since the taking of fingerprints involves very little trouble for the person being fingerprinted, compared to the public need for identification of criminals, the taking of fingerprints is not an unreasonable search and seizure.

Another case decided by the Saskatchewan Provincial Court stated that the search and seizure in the following incident was not unreasonable.

Two police officers arrived at an apartment building because of a complaint made by someone else in the building. At the door of the apartment in question the officers smelled a strong odour of marijuana and heard a discussion concerning the marijuana. The officers knocked on the door of the apartment and were allowed to enter. They saw one of the people in the apartment trying to hide the drugs. The officers took the drugs as evidence. The court decided that although the officers did not have a search warrant (a written permission from the court allowing a search) the officers had reasonable cause for making the search and acted reasonably in doing so.

The Right Not to be Compelled to be a Witness Against Oneself

Section 11(c) of the Charter states:

Any person charged with an offence has the right not to be compelled to be a witness in proceedings against that person in respect of the offence.

In other words, no one can be forced to be a witness at his or her own trial.

In a few cases courts have been asked to look at section 8 of the Narcotics Control Act in light of section 11(c) of the Charter. Section 8 describes the way in which a trial for possession of a narcotic for the purpose of trafficking is handled. The trial is handled in two steps. First, the accused person is tried only for possession of the narcotic. If the accused person is found not guilty, the trial is over. If the person

is found guilty of possession of the narcotic, the trial moves into stage two. At this point, the accused person must prove that he or she is not guilty of possession of the narcotic for the purpose of trafficking. This situation is unusual in criminal law. Usually it is the Crown (or government side) which must prove guilt.

It has been argued that section 8 violates section 11(c) of the Charter because it forces the accused person to give evidence for his own case. The argument is that it would be very difficult for an accused person to prove that he or she is not guilty without personally testifying.

So far, the courts have not accepted this argument. Courts in Ontario and British Columbia have agreed that section 8 of the Narcotics Control Act does not force an accused person to give evidence at that person's own trial. Other people may be witnesses proving that the accused is not guilty. Nothing in the law forces the accused person to testify. Circumstances may create a situation where an accused person must testify to prove his or her own innocence, but the law does not create the situation.

Several cases across Canada have dealt with the issue of breathalyzer tests (a breath test to determine how much alcohol a person has had to drink). The Criminal Code requires a driver stopped by the police to give a breath sample to determine whether the driver is impaired by alcohol. The analysis of the breath sample may be used against the accused person in court. Many accused persons have argued that by requiring them to give breath samples, the Criminal Code forces them to be witnesses against themselves.

It appears that courts will not accept this line of defence. Section 11(c) of the Charter protects a person from being a witness against that person. In order to be a witness at a trial one gives verbal evidence. Nothing in section 11(c) of the Charter prevents the admission of evidence as to the physical condition of the accused person.

The Right to be Informed of the Charge Against You

Section 11(a) of the Charter states:

Any person charged with an offence has the right to be informed without unreasonable delay of the specific offence.

A recent case in Alberta upheld this right guaranteed by the Charter.

A criminal case is formally started by a person "laying an information" against the accused person. An "information" is the legal document which states briefly the details of the crime. The person who lays the information swears to the truth of the statement before a court official. This may be done by any person, but is often done by a police officer. The court official may also issue a warrant for the accused person's arrest. This arrest warrant will be served upon (or given to) the accused person.

In the Alberta case referred to, an information had been laid and a warrant taken out for the accused person's arrest eleven months before the warrant was served on the accused person. The accused person had had several meetings with police during those eleven months. During that time he was never told about the warrant for his arrest.

In this case, the court decided that it is in the interest of the public that arrest warrants be acted upon quickly. Because the accused person had been denied his rights under section 11(a) of the Charter, the case against him was stopped.

Cruel and Unusual Punishment

Section 12 of the Charter states:

Everyone has the right not to be subjected to cruel and unusual treatment or punishment.

A New Brunswick court decided that it is not cruel and unusual treatment or punishment to require a person to go through a third trial when the first two trials result in a "hung jury" (the situation where jury members cannot agree on a decision or "verdict").

The issue of cruel and unusual punishment also came up in a case concerning the practice of "double-celling" or putting two prisoners together in one cell. The Federal Court decided that in the circumstances, since the double celling was only temporary until new prisons were finished being built it was not cruel and unusual treatment.

Rights of the Handicapped

To some extent everyone has some form of handicap. For example, some people need glasses to help them see, some may be color blind, while others may have trouble doing simple addition or subtraction problems. Sometimes people are treated differently or unfairly because of their handicaps. The various levels of government have passed laws in an attempt to prevent this from happening. However, discrimination is not always unavoidable. For example, when employees interview applicants for a job they will be discriminating against those people not selected. To discriminate merely means to prefer or choose some things or people over others. Our laws then, allow for some discrimination, but what they do not permit is discrimination for the wrong reasons, such as race, sex, religion, or a handicap.

Sometimes discrimination for reason of a handicap is permitted by law and, indeed, even desirable. No law would require an employer to hire a blind person as a painter or a deaf person as a telephone operator. When a person's handicap prevents the person from doing a job properly, then that person should not be hired. But, where the handicap does not affect job performance, then the discrimination is unfair. The most important law protecting handicapped citizens against unfair discrimination is found in section 15(1) of the Canadian Charter of Rights and Freedoms. This section states:

Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Section 52 of the Constitutional Act 1982 states that the Constitution (of which the Charter is a very important part) is the supreme law of Canada and that any law which disagrees with or is inconsistent with the Constitution does not have the force of law. This means that after April 17, 1985, any law passed by the federal or provincial government which treats handicapped people differently from others will not have the force of law.

There are a few exceptions to this rule. First, section 15(2) of the Charter states that section 15(1) of the Charter will not affect laws or programs designed to help disadvantaged groups such as handicapped people. Second, section 1 of the Charter states:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society.

This section means that the rights of handicapped people to equal treatment can only be taken so far. For example, a law requiring that a person must have a certain standard of vision before that person can be issued a driver's licence would treat blind or partially blind people differently from those who do not have a visual handicap. That law clearly discriminates against people with a handicap, but the idea that driver's licences should not be given to people who cannot see is a reasonable limit to the right to equal treatment guaranteed by section 15 of the Charter. Where there are such reasonable limits put on rights contained in the Charter they must be clearly spelled out in laws.

Finally, section 33 of the Charter states that the federal or the provincial governments can pass laws which deny a person rights guaranteed by section 15 of the Charter (among other sections), but that such laws must state clearly that they have been passed "notwithstanding section 15 of the Charter."

Another important section of the Charter of Rights protecting the rights of handicapped people is section 7 which states:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

In situations where handicapped persons are being held in institutions against their will, or are being given treatment which they do not want, section 7 of the Charter might be used to protect such persons' right to liberty.

Another area of law with an important effect on the rights of handicapped people is that concerning mental incompetency. If persons are unable to look after themselves because of low mental ability, relatives or other concerned individuals may apply to a court to have such handicapped persons declared to be "mentally incompetent." A court will make its decision on the basis of reports from doctors and other evidence given by the people concerned, including in some cases, the person who is the subject of the hearing.

Persons who have been declared mentally incompetent basically lose most of their important rights; such as the right to make decisions for themselves as to what they can do with their property, how they will spend their time, and even where they will live. It is very common for a person to make an application to a court to have a relative declared incompetent after the relative suffers a serious stroke or develops a debilitating disease. If the person is pronounced incompetent by the court, a person appointed by the court will make decisions for the mental incompetent.

These laws have a very serious effect on the rights of handicapped people for two reasons. First, a person may have some level of mental handicap without being totally unable to look after himself or herself. If a court declares the person to be mentally incompetent, the person will lose important rights and that may not be fair. The question of the mental ability of a particular person is usually not one which can be answered with an absolute yes or no.

Second, a person may have a very severe physical handicap but no mental handicap at all. The physical handicap may make it very difficult or even impossible for the person to communicate with other people. The only way anyone can determine a person's mental ability is by communicating with the person. In that situation, a person who has full mental ability or competence may mistakenly be declared mentally incompetent.

Other laws which affect handicapped people most directly are human rights laws. In every province, there are now such laws in place.

Human rights laws are generally designed to ensure that people are treated fairly in five main areas. Discrimination is not permitted on account of handicap with regard to: (1) receiving goods and services; (2) entering into contracts; (3) gaining employment; (4) membership in trade unions or other work-related associations; and (5) seeking housing and accommodation.

The Right to Special Education

In every province in Canada, as well as in the Northwest and Yukon Territories, all children have the right to an education, free of charge, through the public education system in place in the area. It is a right which many of us take for granted, but is it really a right which is held by all Canadian children?

Some children have handicaps - mental or physical, or both - which create special needs for them. These children may need special teachers who are specially trained to give them a proper education. Special equipment may be needed for the education of the handicapped. Does the right to receive an education include the right for handicapped children to receive a special education?

One serious problem with regard to providing special education programs is where and how the education will be given. Special education experts now realize that, in many cases, the best place for a child with a handicap to be educated is the neighborhood school where the child lives. By staying in the community where he or she lives, a handicapped child can be a part of that community both during and after school hours. Special classes for handicapped children can be provided in the neighborhood schools, and by sharing some classroom time with the other children in the school, handicapped children may become better accustomed to normal life in the community. Time spent in the playground before and after school, at lunchtime and during recess also allows handicapped and non-handicapped children to better understand each other. The mystery, fear, or strangeness that might be felt about handicapped people may disappear when the non-handicapped get to know them.

On the other hand, some school boards and Ministry of Education people may believe that certain handicapped children should attend school in a separate or segregated school, where all of the children in the school have learning handicaps. They may believe that the special program needed for children with learning handicaps will not fit in well with the regular programs of a neighborhood school. Parents of children with learning handicaps may want their children to be in such schools to avoid teasing by the other children in the school as well as other problems which will probably arise at least initially when a child with a learning handicap goes to a neighborhood school.

From recent court decisions, the right of a handicapped child to special education has been fairly well established. What is not so clear is the issue of who has the right to decide whether the type of education selected is well suited to the child. At present, it seems that the courts are deciding that school boards must provide certain minimum standards of special education, but that once those standards have been met, parents do not have the right to require anything more from the public school system. As court decisions are appealed to higher courts, however, the minimum standards and rights of the parents may change.

The preceding sections have indicated some of the areas in which our courts have given practical meaning to the Charter of Rights and Freedoms.

The Right to Information and Privacy

The Access to Information Act, passed by the Canadian parliament, came into effect in late 1982. The Act consists of two main parts. The first part is the freedom of information legislation which sets out the right of public access to government records. The second part is protection of privacy legislation.

The purpose of the Act, as stated in section 2(1), is as follows:

...to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific, and that decisions on the disclosure of government information should be reviewed independently of government.

The types of "records" to which the Act applies are broadly defined and include...any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof.

The Act applies to most government institutions. These are listed in a Schedule to the Act. The schedule includes more than 130 government departments, agencies, boards and institutions. Those it does not list include federal crown corporations which supply goods and services, for example, the CBC and Air Canada. It was felt that their exclusion from the schedule was necessary to protect their competitive position. The schedule also does not automatically include newly formed agencies, but rather would have to be specifically amended in order for the Act to be applicable.

The Act does not apply to government information obtained in confidence from other governments, including those of the various regions, municipalities and provinces of Canada, foreign states or international organizations of foreign states. Other exemptions include information relating to federal-provincial affairs, international affairs, defence matters, national security, law enforcement and investigations, the economic security of Canada, personal privacy, information that would be prejudicial with respect to a third party, information that is subject to solicitor-client privilege, information which is statutorily prohibited from being disclosed, and information that will be published within ninety days of the request for access. One notable exemption is of certain Cabinet documents. This exemption also exempts these documents from judicial review.

If you are a Canadian citizen or landed immigrant who wishes to see certain government information, the Act sets out a procedure by which you can make a request in writing to the government institution that has control of the record. Your request must "provide sufficient detail to enable an experienced employee of the institution with a reasonable effort to identify the record". The government institution must respond in writing to the request within 30 days, either by denying access or giving access. The time limit can be extended in certain circumstances. There is a fee which may be required (not exceeding \$25.00) as well as charges for copies.

In the event that you are not happy with the response from the government institution to which you made a request for access, for example, where access has been refused or where you feel the time limit has been extended unreasonably, you may make a complaint in writing to the Information Commissioner. The Information Commissioner may then investigate the matter. The Act states that such investigations must be held in private, and gives the Information Commissioner rather extensive powers of investigation. The Information Commissioner's decision takes the form of a recommendation. In other words, it is not binding. In a situation where access has been denied, even after an investigation, there is a right of appeal to the Federal Court.

Section 19 of the Access to Information Act contains an exemption for personal information. In other words, the government institution to whom a request for access has been made cannot disclose any personal information.

There are many situations in which the public's right to know competes with the individual's need for privacy. In dealing with government bodies such as the Unemployment Insurance Commission, Social Services, Canada Pension, and Legal Aid, each individual is required to divulge personal information on finances, dependents, employment records and so on. From the point of view of the agencies, it is necessary to garner enough information to determine the applicant's eligibility for assistance or benefits. Such assessment is desirable to the extent that it provides some control on the expenditure of funds provided by you and me. The individuals, however, required to give the information are concerned about how much of the total information accumulated is actually necessary to determine eligibility, what information gathered from other sources may be in the file, how accurate that information may be, who has access to the information in addition to the body for whom it is gathered, and how easily the file is made available to the individual involved.

With the passage of federal statutes dealing with freedom of information held in federal hands, there is now, at least, a procedure by which information contained in federal data banks may be obtained by members of the public. It must be pointed out however that all such information is not readily available, the exemptions from disclosure forming a lengthy list.

In addition to information by government agencies, there are many other situations in which personal information is demanded. Often this information relates to credit or financial stability.

There is a conflict between the sellers "need to know" the financial situation of the customer and the customer's desire to preserve as much privacy as possible coupled with a "need to know" the seller's information sources. The customer wants the right to read and correct any information provided on a credit check. Consumer advocates have declared that information more than a prescribed number of years old should be automatically deleted from a credit file, and the same advocates suggest restraints on revealing this information to persons other than those for whom it was specifically gathered.

School records provide another area for conflict between freedom of information and a right to privacy. From the educator's position a school record is a valuable tool in assessing progress, highlighting problems (academic or personal) that the pupil may have, and indicating special needs. Given the mobility of today's families, it is considered important that complete records be available (and transferable) to make a new school aware of a student's previous performance and his special needs, if any.

From the student's viewpoint the question arises "who should have access to these files?" Should the student have complete access, including access to psychological assessments by counsellors, or medical information revealing terminal diseases? Is the school record updated or does information describing a child as, for example, a discipline problem in grade three, remain forever on file though the child may have had no discipline problem at all for several years? Will transference of files from one school to another mean that a poor record in another school will mitigate against a fresh start in a new school? Will all teachers on staff have ready access to a particular school record, or should there be a screening process so that only those with a determinable need to know certain information will be given access to the file?

Medical records also raise questions. While there can be no doubt that as much detailed information as possible is necessary to treat a patient, what happens to this information when treatment has been completed? Who has access to the information during treatment - is it only looked at by the case doctor and nurses or is such information readily available to all medical staff even if not involved with the patient? Does a patient have access to his complete record, with someone to interpret entries if that becomes necessary? How much protection is there for the patient from this medical information getting into the hands of insurance companies, lawyers not authorized by the patient, credit bureau and other information gathering agencies? How securely are such records preserved against theft or dissemination to unauthorized parties? With computers now linking many hospitals will more eyes be able to see a patient's file? If the answer to the last question is yes, access to computer records may be justified from a medical practitioner's position by stating that such information on treatment received by you as a patient may aid another practitioner in another hospital in successfully dealing with a similar medical problem.

The preceding examples describe only a few of the many situations where the problem of revealing or concealing information may be resolved either way, where both access to information and protection of privacy may produce harm and benefit at the same time.

Children's Privacy Rights

Child welfare laws surround the investigation and hearing of child abuse or neglect cases in secrecy. The Child Welfare Act makes it an offence to disclose any information about a child who has been dealt with under the Act. Furthermore, anyone who publishes or broadcasts a child's name or describes the evidence brought out at a judicial proceeding is guilty of an offence. Even a lawyer defending parents in a child welfare case can have trouble getting background information because disclosure is only to take place "at a trial, hearing or proceeding." News reporters or the public at large have no access to the hearings or to any information concerning child welfare cases.

In the area of criminal law, Youth Court records, reports and documents are strictly controlled by the Young Offenders Act. Such material are authorized to be kept by the police and disclosed only to the court. Fingerprints and photographs can be taken, but they must be destroyed if the young person is acquitted, not charged, or the charge is withdrawn. Furthermore, if the young person goes two years without an offence after conviction on a serious offence, all juvenile records on that person must be destroyed.

In this area, the privacy rights of the young person, even when he or she is an offender, seem to carry significant weight. The value being protected is the "fresh start." If a young person has a juvenile record, or one that cannot be expunged, it could jeopardize future employment opportunities.

Student and Teacher Rights

It is becoming more and more common for professionals to be sued for negligence, and teachers are no exception. School boards and principals can help by establishing guidelines for conduct, but such procedures will never protect teachers in all situations. Teachers, themselves, must become knowledgeable about the subject of negligence so that they can establish their own personal guidelines to avoid any suggestion of negligence.

Negligence is a type of *tort*. Basically, a *tort* is a wrong for which the victim or injured party can sue the wrongdoer. What is often confusing is the fact that many torts (or civil wrongs) are the same kinds of acts that society has labelled crimes. For example, a teacher who intentionally strikes a student might be charged by the police with having committed the crime of assault. At the same time, the injured student might commence a lawsuit alleging that the teacher committed the tort of assault and battery and was therefore liable or legally responsible for this wrongful act.

Note, though, that the legal outcome of a criminal action is very different from that in a civil action. Criminal law will punish the teacher, but civil law tries to compensate the victim or injured party by awarding a money judgment called damages. Since the aim of the two types of law is different, a teacher could be both convicted of a criminal offence and found civilly liable in tort. Similarly, the standard of proof required by the two types of law is different. Where there is not enough evidence in a situation to carry through a criminal prosecution, there can still be a finding of liability in the civil lawsuit.

Crimes and intentional torts like assault and battery require a deliberate intent, on the part of the teacher, to strike the student. The tort of negligence, however, is different. Intentions are irrelevant; it is the actions that count. Therefore, if a child is injured and this injury is directly attributable to some act or omission to act on the part of the teacher, then the teacher may be found negligent. The crucial question becomes: was the harm foreseeable? Teachers are expected to protect their students against any dangers which the teacher knew or should have known might occur. Freak accidents which could not possibly be anticipated do not fall within the tort of negligence.

A lawsuit for negligence cannot be brought until certain elements are present. These elements are:

1. duty,
2. breach, and
3. damage.

First the court will look to see if, in the circumstances, the teacher owed a *duty in law*, to take care and protect the student from harm. Since cases have long established the principle that a teacher is standing in the place of the parent (*in loco parentis*), it is not difficult to establish the existence of a legal duty to take care of the student.

It then becomes necessary to show that the teacher breached that duty by acting in a manner which is below the acceptable standard of care. It is this *breach* aspect of the tort of negligence which is the hardest to prove, and it is this aspect which is most frustrating to a teacher. What is the acceptable standard of care a teacher must provide? Unfortunately, there is no easy answer to this question. Every case in negligence allows the judge or jury to carefully review the teacher's conduct in the context of that particular fact situation. It will always be impossible to prescribe a code of behavior for teachers. Basically, a teacher is expected to live up to the same standard or care as would be provided by a careful or prudent parent.

Finally, and most important, the student must have suffered *actual damage or injury* before a lawsuit in negligence can be launched. The tort of negligence is not complete without actual damage.

A teacher will be found negligent when the three elements of duty, breach and damage have been proved. However, this does not necessarily mean that the individual teacher will be paying all the damages. So long as the teacher is carrying out assigned duties, the school board, as his or her employer, will be deemed, by law, to be *vicariously liable*. School boards are required by law to carry insurance which will indemnify the board and its employees. It is the teacher's responsibility to find out the extent of the board's coverage. Note, too, that wrongful, intentional conduct on the part of the teacher is usually not covered by the insurance policy. Since the board is responsible when the teacher is carrying out assigned duties, it should be clear why teachers must make sure field trips and unusual events off school grounds are sponsored by the board. A board will not be vicariously liable for its employees who are acting outside the normal scope of their duties.

Finally, it should be explained that teachers and the school board are not always 100% liable for injuries. Tort law can apportion liability, something which the criminal law cannot do. Some students ignore warnings or attempt activities without permission. If conduct such as this is found to have contributed to the accident, then a certain percentage of fault can be attributed to the student. Practically speaking, this results in a lower award of damages since the teacher and board might be only 50% or 75% liable.

Human Rights in Alberta

In Canada, the protection of human rights is set out in The Charter of Rights and Freedoms. In Alberta, the Individual Rights Protection Act also serves to protect the individual from discrimination. The Alberta Human Rights Commission administers the Act, and its function is two-fold:

1. Education

The Commission is charged with the responsibility of forwarding the principle that every person is equal in dignity and rights without regard to race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin.

The Commission and staff do research and conduct programs designed to eliminate discriminatory practices, and encourage and co-ordinate public human rights activities. Resources are available for workshops, seminars and other activities.

2. Enforcement

The Commission is responsible for investigating and resolving complaints of discrimination lodged under the Individual's Rights Protection act.

According to Webster's International Dictionary, to discriminate is "To make a difference in treatment or favour on a class or categorical basis in disregard of individual merit." Hence discrimination is an action of behaviour based on prejudice.

Prejudice is a particular way of perceiving and judging. A prejudiced person sees only a partial or simplified picture and judges a person or group of persons as inferior on the basis of certain ascribed objectionable qualities or characteristics.

The word *prejudice* suggests scorn, dislike, fear and aversion, and negative and often hostile attitudes may develop. Prejudices vary in intensity as indicated by such words as preference, bias, dislike, hostility, hatred and bigotry.

Discrimination often means avoiding a person or group because of prejudice. It is discriminatory to deny a person or a group a right such as use of a public facility. Discrimination also arises when a person treats another less favourable than he or she treats, or would treat, someone else.

Discrimination can exist in three main forms:

1. overt discrimination
2. unequal or differential treatment
3. systemic discrimination.

Overt discrimination usually occurs when one person, or one group, deliberately treats another person or group unfairly. It is an irrational and destructive behaviour which often stems from ignorance, fear or the wish to maintain advantages over others.

Discrimination occurs as a result of paternalism or traditional attitudes. For example, an employer may hire women but does not allow them to work night shifts or in dangerous locations, and consequently pays them less than their male counterparts. This is unequal or differential treatment.

Systemic discrimination is subtle and pervasive. It is often present in established institutional practices. Systemic discrimination occurs when an apparently neutral policy or practice has an adverse impact on a group of people.

Women and members of visible minority groups with the same education and experience consistently earn less than a comparable group of white males in similar positions. About 50% of Canadians who have a permanent physical disability are unemployed, even though many are willing and able to work. These situations exist partly because of systemic discriminatory practices such as the following:

(a) Pre-selection Testing

Questions on aptitude and I.Q. tests reflect specific cultural values and social norms. Individuals belonging to certain groups may be eliminated from employment through these tests.

(b) **Excessive Experience Requirements**

When excessive or unnecessary work experience is asked for by prospective employers, qualified persons are often too intimidated to apply.

(c) **Canadian Experience**

The requirement that job applicants must have Canadian experience may exclude qualified new Canadians. Denying a landed immigrant a job because of lack of Canadian experience may constitute discrimination on the basis of place of origin.

(d) **Physical Requirements**

Unnecessary strength, height or weight requirements may exclude most women and those of certain racial groups whose genetic make-up determines a slight or short stature. Capable, physically disabled persons are also excluded.

Height and weight requirements in employment may constitute discrimination on the basis of sex, race, ancestry or physical characteristics, unless they can be shown to be essential to the safe performance of the job or are a business necessity.

For example:

A woman complained of sex discrimination, alleging that she was denied a job as a transit operator, because she was overweight. She claimed that equally overweight males had been accepted.

As a result of the Commission's involvement, the transit department reviewed its height and weight requirements, and the woman was hired after passing a driving test and a medical examination.

The Individual's Rights Protection Act

The Act applies to all provincial government departments and agencies as well as all businesses and industries under provincial jurisdiction in all facets of employment, business and tenancy policies, practices and referrals.

Human Rights is an umbrella term which is open to wide interpretation. However, under the Act, human rights takes on a specific definition. The Act prohibits discrimination in specific areas on the basis of specific grounds. The Commission has a mandate to investigate those allegations of discrimination which fall within its legal jurisdictional boundaries. The various types of discrimination which the Individual's Rights Protection Act is designed to prevent are outlined in the following sections.

Notice, Sign, Symbol, Emblem

It is illegal for any person to publish or display any notice, sign, symbol or emblem for the purpose of discrimination because of race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin.

For example:

A woman complained of sex discrimination, alleging that a slogan in a local restaurant was offensive and promoted a negative stereotype of women. The slogan read: "If your wife can't cook, don't divorce her, keep her as a pet and eat at this restaurant."

As a result of the Commission's involvement, the slogan was immediately removed and the restaurant owner agreed to refrain from displaying any similar slogans in the future.

However, under the provisions of the Act, any person is allowed to:

- (a) display a notice, sign, symbol or emblem to identify facilities customarily used by one sex;
- (b) display or publish a notice, sign, symbol, or emblem of a non-profit, political, religious, or ethnic organization indicating a purpose or membership;
- (c) display, publish or circulate a proper notice sign, symbol or emblem according to a Bona Fide Occupational Qualification (BFOQ).

Under the Individual's Rights Protection Act, preferences for a job applicant of a specific sex, race or age are prohibited. However, the Act recognizes that occasionally there may be a bona fide reason for an employer to indicate a limitation, specification, or preference on the basis of race, sex, ancestry or any other prohibited grounds in the areas of advertising and employment. Under such circumstances, an employer may request a Bona Fide Occupational Qualification (BFOQ) opinion from the Commission. A request should then be addressed in writing to the Commission, supplying information to support the request. The Commission may give an opinion only after the merits of each request have been investigated by the Commission staff. If a favourable opinion is given, the Commission will not accept complaints against the employer concerned on the basis of the specified ground.

For example:

A woman correctional officer filed a complaint of sex discrimination alleging that her employer selectively deployed her away from duties for which she was trained and which she performed in male living units of a correctional institution.

The investigation revealed that prior to her assignment a directive was issued ordering all female officers be transferred from male living units. While salaries were not affected by the deployment, potential mobility and experience were. However, the complaint was eventually dismissed, because a favourable BFOQ opinion was found to be still valid, allowing for the hiring of male correctional officers only to work in the male living units.

Tenancy

It is a contravention of the Act for landlords or their agents to refuse rental of any self-contained dwelling or commercial unit that is advertised for rent, or treat their tenants differently because of race, religious beliefs, colour, sex, physical characteristics, ancestry, or place of origin.

For example:

A Native Indian couple complained of discrimination, alleging that they were refused rental of an apartment because of their race.

The Commission's investigation substantiated the claim. The case was resolved when the couple accepted an offer of \$100 for out-of-pocket expenses, the landlord apologized to the couple in writing and a fair rental policy was adopted.

Services and Accommodation

It is a contravention of the Act for a person to refuse accommodation, services, or facilities which are customarily available to the public, or treat any person differently because of race, colour, sex, physical characteristics, ancestry, or place of origin. Availability, quality and speed of service must be equal for everyone.

For example:

A Chinese homeowner complained of racial discrimination, alleging that the contractor who built the house provided superior services to the white homeowners in the neighborhood.

The Commission's investigation revealed that there were considerably more structural problems in the Chinese dwelling than others. The case was resolved when the contractor paid a compensation of \$1,500 and apologized in writing.

Advertisements

The Act prohibits discrimination in job advertising. It is illegal for anyone to advertise expressing any limitation, specification, or preference as to race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin, unless on the basis of a Bona Fide Occupational Qualification.

For example:

A woman filed a complaint of sex discrimination, alleging that an advertisement in a local newspaper, which stated "Licensed Body Man Required," discriminated against female applicants.

Investigation revealed that the advertisement was placed because of an oversight on the part of the staff of the classified advertisement department. The case was closed after assurances were given by the department manager that his staff would use neutral genders or some reference such as "M/F" in all job advertisements.

Job Applications

The Act prohibits any employer requesting from an applicant any oral or written information concerning race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin.

An employer cannot ask an applicant for a photograph before hiring, as this would reveal the sex, race or age of that person. Requesting one for identification purposes after hiring is allowed.

For example:

A female filed a complaint alleging that the employment application form of a local credit company required women to furnish information regarding their husbands. She claimed that this constituted sex discrimination as no similar questions were asked of male applicants about their wives.

The Commission investigation resulted in the employer having to amend the application form and to apologize to the woman in writing.

Employment

No employer or any person in a position of authority can deny the best qualified job applicant, or treat employees differently in training, promotion, or employment benefits because of race, religious beliefs, colour, sex, physical characteristics, age (45-65 years), ancestry, place of origin, or marital status.

For example:

A 49-year old woman filed a complaint of sex and age discrimination against an oil firm, alleging that she was given fewer responsibilities than a younger person, a man, in the accounting department. She also claimed that he was being considered for promotion.

The investigation revealed probable cause of discrimination. The company agreed to settle the case by offering her \$3,000 as restitution, to revamp their employment practices and to implement a non-discriminatory policy.

However, the provisions of the Act do not apply if a person:

- works in a private home
- works on a farm and resides in the private home of the farmer.

Equal Pay

The Act prohibits employers paying their employees of one sex at a lower rate than those of another sex for work of similar or substantially similar nature in the same establishment. If males and females are doing similar duties in the same job location, they must be paid equally.

It is also illegal for employers to reduce a rate of pay in order to equalize the rates of pay between males and females.

However, employers are entitled to hire people over the scale rate if they have additional related experience and/or education, and can give them merit increments, as long as this practice is objective and consistent.

For example:

A female apprentice cabinet maker complained of sex discrimination when her employer allegedly ordered her to do more menial tasks, restricted her professional training and experience and paid her less than her male colleagues with similar qualifications.

The investigation confirmed the woman's allegation, but the Commission was unable to effect an appropriate settlement. A Board of Inquiry was appointed to hear the case and found the complaint to be justified. The Board recommended that the woman receive the pay differential and that the furniture company cease further discriminatory practices.

Membership In a Trade Union, etc.

It is a contravention of the Act for a trade union, employers' organization, or occupational association to deny membership, expel or suspend a member, or treat a member differently because of race, religious beliefs, colour, sex, marital status, physical characteristics, age, ancestry, or place of origin.

For example:

A female petroleum geologist complained of sex discrimination when she was denied membership in a club.

The investigation revealed that it was a registered private club. The club was exempted from the provisions of the Individual's Rights Protection Act, and the case was therefore dismissed.

Sexual Harassment

The Commission considers harassment on the basis of sex to be a violation of the Act, and has established the following definition:

"Sexual harassment is an unwanted sexual solicitation or advance made by a person who knows or ought to know that it is unwelcome.

A reprisal or threat by someone in a position of authority after a sexual advance is rejected constitutes sexual harassment.

An employer or a person in a position of authority, after becoming aware of an occurrence of sexual harassment, and who fails to take appropriate action, may be held liable."

Sexual harassment charges can be pressed by the Human Rights Commission in all areas including employment, tenancy, public services and accommodation.

For example:

A woman filed a complaint, alleging that she was sexually harassed by her manager one Sunday when she was asked to work overtime. She reported the incident to the President of the company who failed to take appropriate action. The investigation substantiated her allegation. The case was resolved with the company's release of the manager, a fair severance pay and a written apology to the woman.

Physical Characteristics

Physical characteristics, as defined in the Act, means any degree of physical disability, infirmity, malformation or disfigurement caused by bodily injury, birth defect or illness. It includes epilepsy, paralysis, amputation, lack of co-ordination, blindness, deafness, muteness and physical reliance on guide dogs, and wheelchairs or other remedial appliances or devices.

Employers are expected to make reasonable accommodation to provide access to, and washroom facilities in the workplace for, physically disabled employees. If a person is denied a job because of physical disability, or if an employee is dismissed for reason of lack of facilities for physically disabled persons, discrimination on the basis of physical characteristics may be claimed.

Landlords and persons who provide public accommodation, services or facilities must ensure that their buildings, if built after 1975, comply with the requirements of the Alberta Uniform Building Standards Act and regulations under that Act in relation to accessibility for physically disabled persons.

It is a contravention of the Act for anyone to deny a person a public service, housing or accommodation because of physical disability.

For example:

A blind woman filed a complaint on the basis of physical characteristics alleging that she and her spouse were refused service by the owner of a cafe because of the presence of a guide dog.

The woman's allegation was substantiated by the Commission's investigation. To settle the complaint, the cafe owner apologized to the woman, offered to provide her and her spouse a service free of charge for one occasion within a period of six months and agreed that services at the cafe would not be denied to any accompanied blind person in future.

Special Programs

Special programs are designed to upgrade, train, recruit and promote people excluded from meaningful opportunities.

Under the Individual's Rights Protection Act, special programs are allowed to be set up on a voluntary basis subject to approval by the Lieutenant Governor in Council. The Lieutenant Governor in Council has delegated its authority to the Alberta Human Rights Commission to make regulations for special programs for physically disabled persons.

Dealing with Discriminatory Practices

Overt discrimination is easily identifiable, but more subtle forms are not always recognized as grounds for legitimate complaints. While a complaint must relate to the provisions of the Individual's Rights Protection Act, it is sometimes assumed that discrimination has not occurred unless a person has actually been told that he or she will not be hired, rented an apartment, or refused a service simply because of race, sex, or other prohibited grounds.

A simple rule of thumb to apply when considering if the Act has been violated is to ask whether or not the outcome would have been reversed in a different circumstance if the woman had been a man, the 45-year old had been 25, the married person had been single, or the Native person had been white.

However, before lodging a complaint, a person must have reasonable grounds to believe that discrimination has occurred. This may result from a comment, inconsistencies in the application of stated policies or procedures, or the existence of documented evidence or witnesses.

If a person believes that discrimination has occurred, it is suggested that he or she tries to resolve the situation before bringing the concern to the Commission. For example, if a person has been denied the right to compete for a job promotion or unfairly denied a promotion, it would be expected that the matter be discussed with the supervisor. In unionized employment settings where matters such as training and promotion are governed by a collective agreement, it is advisable to use the grievance procedures in an attempt to rectify the perceived discriminatory practice.

However, pursuing the problem through management, a union, or a civil lawsuit does not preclude the option of simultaneously filing a related complaint with the Commission.

A concerned citizen, a group, an occupational association or a trade union may lodge a complaint of discrimination on behalf of an individual or on behalf of an entire group of identifiable individuals.

Individuals are protected by Section 10 of the Individual's Rights Protection Act from any form of retaliation such as discharge, suspension, expulsion, intimidation, or coercion. The Act specifically prohibits reprisals against any person for having:

- lodged a complaint of discrimination with the Commission
- given evidence concerning a complaint
- affected a complaint indirectly in its initiation, investigation or settlement
- supported or advocated adherence to the provisions of the Individual's Rights Protection Act.

Therefore people should not hesitate to file complaints of discrimination. They may file formal complaints of retaliation with the Commission to protect themselves in case of any reprisals.

For example:

A 65-year old former teacher filed two retaliation complaints with the Commission alleging that her former employer refused to re-employ her as a part-time teacher, and that there was pressure applied by her former employer to reduce her substitute teaching opportunities because she had previously filed a complaint of age discrimination.

The Commission's investigation substantiated both retaliation complaints. The terms of the settlement included an agreement by the employer to pay her \$2,500 damages for insult and injury, to write a letter of apology to her, to sponsor an anti-discrimination workshop to be conducted by the Commission for the employer's staff and to review its hiring practices and policies to ensure compliance with the Individual's Rights Protection Act.

Filing Complaints

Any person, who has reasonable grounds to believe that discrimination has occurred, may contact the nearest office of the Alberta Human Rights Commission. People living south of Red Deer should telephone or write to the Southern Region Office of the Commission in Calgary. Those people living in Red Deer or points north should contact the Northern Region Office in Edmonton.

It is the responsibility of the Commission to determine if an individual's allegation is within its jurisdiction, and whether or not there are sufficient reasonable grounds to lodge a formal complaint. Any person who calls the Commission office to explain the particulars of a situation should ask for the Intake Officer who will request details.

If the matter is within the Commission's jurisdiction, Form No. 1, as shown on page 45 will be drawn up for signing before the complaint is considered officially filed. A complaint must be filed within six months of the alleged act of discrimination.

After a complaint has been filed:

- the case will be assigned to a Human Rights Officer for investigation
- a copy of the signed Form No. 1 will be forwarded to the respondent who is the person or establishment against whom the complaint is being made
- an impartial investigation will be conducted to establish the facts of the case. The respondent and all relevant witnesses will be interviewed and all relevant documents will be requested by the Human Rights Officer.

If the investigation reveals no evidence of discrimination, the complaint will be dismissed as being *without merit*. The complainant has the right to appeal this decision within ten days after being notified of the dismissal.

If the complaint is substantiated with evidence of discrimination, the Officer will review the facts and the proposed terms of settlement with the respondent and the complainant.



HUMAN RIGHTS COMMISSION

FORM 1

COMPLAINT
under
THE INDIVIDUAL'S RIGHTS PROTECTION ACT

I/We,

COMPLAIN
AGAINST

alleging that, on or about ,
through ,
at did contravene section(s)
..... of The Individual's Rights Protection Act on the
grounds of in the area(s)
of I make this complaint
on behalf of:

 Particulars:

Dated at on 19
(city or town) (month) (day) (year)

This statement is true to the best of my knowledge. I hereby authorize the Alberta Human Rights Commission to investigate the above mentioned complaint and take whatever steps it considers necessary in an endeavor to effect settlement of the said complaint.

Filed:

Case number:

 Signature of Complainant

In settling the case, the respondent may be asked to:

- cease discriminating
- change policies and practices
- conduct staff seminars or workshops
- restore the complainant's rights
- compensate the complainant for lost earnings, expenses incurred and/or damages for insult and injury.

If the proposed terms of settlement are acceptable to all parties and approved by the Commission, the case will be closed. If the respondent offers a reasonable settlement and the complainant refuses to accept, the case may be dismissed.

If an appropriate settlement is not offered, or if the respondent refuses to co-operate in the investigation, the Commission may direct the Minister of Labour to appoint a Board of Inquiry to hear the case. The complaint may be withdrawn at any time prior to the appointment of a Board of Inquiry.

The Board of Inquiry is an independent, quasi-judicial body, consisting of one or more members.

A Board of Inquiry will, if it finds a complaint to be unjustified, dismiss the case.

If a complaint is found to be justified, the Board of Inquiry will order the respondent to cease and refrain from further discrimination and to take any other appropriate action.

A Board's decision is binding on all parties and is enforceable in the same manner as an order of the Court of Queen's Bench. The Board's order may also be appealed to the Court by any party.

If you have a concern, or wish more information, contact the:

Alberta Human Rights Commission

501, Edwards Professional Centre,
10053 - 111 Street,
Edmonton, Alberta
T5K 2H8
Telephone: 427-7661

or

1253 Ford Tower
633 - 6th Avenue S.W.
Calgary, Alberta
T2P 2Y5
Telephone: 261-6571

Exercise 1

Briefly define the following terms. If you are unsure as to their meaning, consult your lesson notes or a dictionary.

1. anarchy: _____

2. analogy: _____

3. a precedent: _____

4. a state: _____

5. a constitution: _____

6. jurisdiction: _____

7. laissez-faire: _____

8. autonomous: _____

9. entrenched: _____

10. expunge: _____

11. discriminate: _____

Exercise 2

Indicate whether each of the following statements is True or False by circling T or F in the space provided.

1. All of our present day laws have their origin in the English common law and the Roman, or civil, law. T F
2. Common law overrides any statute dealing with the same legal point. T F
3. Criminal law is the branch of law that deals with the organization of the government and the exercise of its powers. T F
4. By virtue of the BNA Act, Canada inherited the legal system of Great Britain. T F
5. In theory, each legislature has absolute power within its fields of jurisdiction. T F
6. The BNA Act adequately provides the provinces with the necessary power to raise the money needed to carry out their many activities in the field of social legislation. T F

- | | | |
|--|---|---|
| 7. Canada has the constitutional right to amend any aspect of the BNA Act if it wishes to do so. | T | F |
| 8. A Bill of Rights was included when the BNA Act was passed in 1867. | T | F |
| 9. There was no constitutional guarantee of civil rights before the passage of the Constitution Act in 1982. | T | F |
| 10. The Canadian Charter of Rights and Freedoms guarantees that every individual is equal before and under the law. | T | F |
| 11. Under the Charter of Rights and Freedoms all affirmative action programs are declared to be unconstitutional. | T | F |
| 12. In Canada individuals are granted freedom of conscience and religion without any limitations. | T | F |
| 13. No one can be forced to be a witness at his or her own trial. | T | F |
| 14. Any person charged with an offence has the right to be informed without unreasonable delay of the specific offence. | T | F |
| 15. Everyone has the right not to be subjected to cruel and unusual punishment. | T | F |
| 16. Persons who have been declared mentally incompetent lose many of their rights. | T | F |
| 17. Under the Young Offenders Act, if a young person goes two years without an offence after conviction on a serious offence, all juvenile records on that person must be destroyed. | T | F |
| 18. The Individual's Rights Protection Act is a federal statute applicable to all of Canada. | T | F |

Exercise 3

Fill in the blank spaces in the following statements; only one term is required for each space.

1. Today, in all nations, one of the most important functions of the State is the administration of _____.
2. Our legislatures today pass new legislation called _____.
3. The law that affects the regulation of the rights and duties of individuals is called _____ law.

4. The branch of law that pertains to the relationship between the state and private citizens is known as _____ law.
5. On April 17, 1982 the British North America Act was officially renamed the _____ Act.
6. Under the Charter of Rights and Freedoms everyone has the right to the equal protection and equal benefit of the law without _____.
7. The two official languages of Canada are _____ and _____.
8. It is the _____ who will be called upon to determine whether numbers warrant the provision of minority language educational instruction or facilities in particular localities.
9. In Canada, everyone has the right to be secure against _____ search and seizure.
10. Sometimes discrimination for reason of a _____ is permitted by law.
11. A _____ is a wrong for which the victim or injured party can sue the wrongdoer.
12. Basically, a teacher is expected to live up to the same standard of care as would be provided by a careful or prudent _____.

Exercise 4

Each of the following classes of subjects comes under federal or provincial jurisdiction. In the space provided at the left place an **F** if it comes under the federal parliament, and a **P** if it comes under the provincial legislatures.

1. Weights and Measures _____
2. Legal Tender _____
3. Naturalization and Aliens _____
4. Direct Taxation Within the Province for the Raising of Money for Provincial Purposes _____
5. Militia, Military and Naval Service and Defence _____
6. Currency and Coinage _____
7. Bankruptcy and Insolvency _____
8. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon _____
9. Copyrights _____
10. The Census and Statistics _____
11. Banking, Incorporation of Banks and the Issue of Paper Money _____
12. The Incorporation of Companies with Provincial Objects _____
13. Bills of Exchange and Promissory Notes _____
14. The Criminal Law, except the Constitution of the Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters _____
15. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers _____
16. Generally all matters of a merely local or private Nature in the Province _____
17. The Regulation of Trade and Commerce _____
18. Property and Civil Rights in the Province _____
19. Municipal Institutions in the Province _____
20. Postal Service _____

Exercise 5

1. Briefly define the term *law*.

2. Laws may be broadly classified into three major types:

(a) _____

(b) _____

(c) _____

3. Public law is usually classified as either

(a) _____

(b) _____

4. Why did the Fathers of Confederation not wish to copy the federal government system found in the United States?

5. Briefly describe the primary purpose of the BNA Act in regard to the distribution of powers between the federal and provincial governments.

6. Briefly describe the provisions guaranteed in the following sections of the BNA Act:

- (a) Section 20 - _____

- (b) Section 93 - _____

- (c) Section 99 - _____

- (d) Section 133 - _____

7. Briefly describe the seven categories of rights and freedoms which are stipulated in the Constitution Act.

- (a) _____

- (b) _____

- (c) _____

- (d) _____

- (e) _____

(f) _____

(g) _____

8. Section 15(1) of the Charter sets out particular forms of discrimination that are viewed as offensive. These are:

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(g) _____

9. Human rights are generally designed to ensure that people are treated fairly in five main areas. These are:

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

QUESTIONNAIRE FOR LAW 30 STUDENTS

Please complete this form and return it with your first lesson.

Name: _____ File No. _____
(Mr., Mrs., or Miss) (Circle the one that applies)

Address: _____ Birth Date _____
_____ Postal Code _____ Phone No. _____

If you are repeating this course, what was your previous mark? _____

2. What was your mark in Grade IX English? _____ In Grade IX Math? _____

3. What were your marks in the following business education courses?

Record Keeping 10	_____	Law 20	_____
Bookkeeping or	_____	Marketing 20	_____
Accounting 10	_____	Business Foundations 10	_____
Bookkeeping or	_____	Typewriting 10	_____
Accounting 20	_____	Typewriting 20	_____
Data Processing 20	_____	Shorthand 10	_____
Clerical Practice 20 or	_____	Shorthand 20	_____
Business Procedures 20	_____		

4. Give any special information (state of health, study conditions, disabilities, etc.) which may influence your progress in this course.

5. Why are you taking this course? (For matriculation, high school diploma, general interest, employment, etc.)

6. If you study this subject with other correspondence students, give their names.

7. List any other subjects you are taking by correspondence study.

8. If you are attending school, give the name of the school.

9. If you are employed, describe briefly the work you do.

10. I am aware that to obtain maximum benefit from this course, independent work is absolutely essential, and that I will need to do my own thinking on the final test.

(Signature) _____

LESSON RECORD FORM

3430 Law 30

Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

Time Spent on Lesson

(If label is missing
or incorrect)

File Number

Lesson Number _____

Student's Questions and Comments

Apply Lesson Label Here

Name _____

Address _____

Postal Code _____

*Please verify that preprinted label is for
correct course and lesson.*

FOR SCHOOL USE ONLY

Assigned
Teacher: _____

Lesson Grading: _____

Additional Grading
E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

Lesson Recorded _____

Teacher's Comments:

Correspondence Teacher

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

- (1) All pages are numbered and in order, and no paper clips or staples are used.
- (2) All exercises are completed. If not, explain why.
- (3) Your work has been re-read to ensure accuracy in spelling and lesson details.
- (4) The Lesson Record Form is filled out and the correct lesson label is attached.
- (5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do not enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.

Try to mail each lesson as soon as it has been completed.

When you register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

FEDERALISM

No more remarkable device than federalism has yet been discovered for holding together large numbers of people of differing interests, traditions, cultures, and religions, scattered over vast areas. Federalism's most distinctive feature is that it divides the right and the power to rule among a number of political bodies - on the one hand, a national or central government that controls matters of concern to the country as a whole, and on the other, the provincial governments that control matters considered to be more properly the concern of the regional communities into which the country is divided.

Therefore all citizens of a federation are under at least two sets of laws, the federal laws of the country and the laws of the particular province or state in which they live. In addition, the provinces are divided into municipalities, which may be cities, towns, villages, rural townships, counties, or other local divisions, and each of these is subject to municipal laws governing such matters as road construction, water supply, sewage disposal, fire protection, business licensing, and so on, in that particular municipality. The municipal governments constitute a third level of government, but their powers are derived from the provincial governments and are determined by provincial legislation.

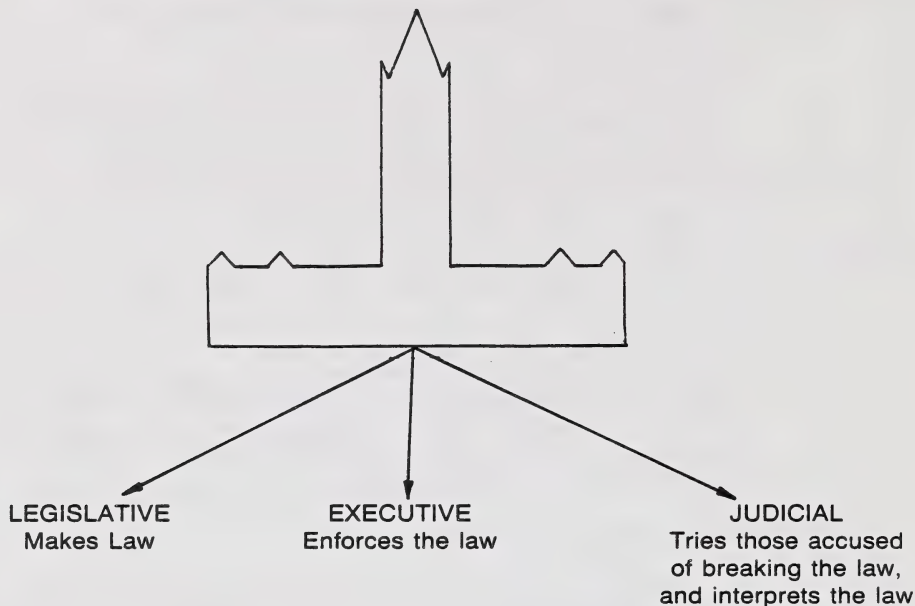
Powers of Government

Over 2,300 years ago the Greek philosopher Aristotle pointed out that there are three distinct kinds of governmental power - legislative, executive, and judicial. Under every political system, the government must exercise these three powers. The first, the legislative power, means the power to enact laws. The second, the executive power, means the power to execute and enforce the laws enacted. The third, the judicial power, means the power to try those who are accused of breaking the law. This last may also involve the necessity of interpreting or deciding exactly what the words of the law mean.

But if all governments are the same in having these three powers, there are the widest differences in the way they exercise and control them, and this is really the important point. Louis XIV, King of France in the 17th century, is said to have declared, "The State, I am the State!" - by which he meant that all powers, legislative, executive and judicial, were in his hands. Never in modern times was this idea carried further than in Hitler's Germany, where every citizen was expected to swear blind obedience to the "Führer" (Leader), and where every part of the government was brought under his complete control. This was despotism or totalitarian government in its extreme form. Such a totalitarian system is as far as possible from the democratic ideal. In a democracy the legislature, the executive, and the judiciary, must each play its part and must each respect the others.

How do these three powers of government operate in the parliamentary system as it is found in Canada and other parts of the Commonwealth? In the British parliamentary system, on which the Canadian parliamentary system is modelled, the executive power is controlled by the monarch and the cabinet, the legislative power is controlled by parliament, and the judicial power by the courts. Though it is the Dominion Parliament that shall be described, the same procedures, in all their main features, are carried out in the provincial legislatures. The procedure is

simplified, of course, in the case of the provinces, by the absence of a Senate. The role of the Governor General is played in the provinces by the Lieutenant-Governor.



At the head of Canada's government is the Queen. She is chief of the executive and is a part of Parliament. In Canada she is represented by the Governor-General. Advising the Governor-General is the Privy Council whose members, the B.N.A. Act says, are appointed and may be removed by the Governor-General. But this is the form only, and not the true substance of the relationship between the Governor-General and these advisors.

The several provinces of British North America and the new Dominion of Canada inherited, "a constitution similar in principle to that of the United Kingdom." This meant that in fact the Crown (the Governor-General) would act on the advice of a group of ministers who were answerable, in turn, to the House of Commons.

This group of ministers is the Cabinet and is made up of the Prime Minister and the other individuals currently serving as ministers of the Crown. All persons who serve as a minister of the Crown become Privy Councillors and remain for the rest of their lives. Custom dictates that only those privy councillors who are members of the current Cabinet take any part in advising the Governor-General.

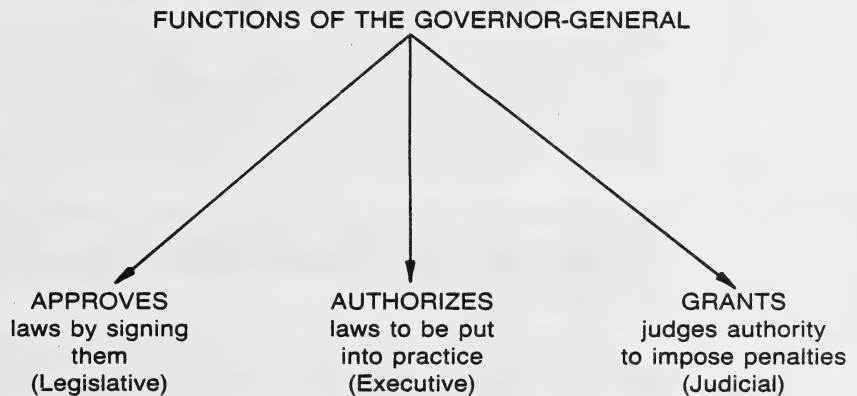
The Cabinet is the active part of the Privy Council. You will not find in the British North America Act any mention of the Cabinet as such, nor of the Prime Minister, although they are the real centre of power under the British system of government. They are part of the unwritten constitution confirmed to the new Dominion by the provision that it should have "a constitution similar in principle to that of the United Kingdom." The House of Commons and the Senate complete the structure.

This, in brief outline, is the form of parliamentary government provided for in the British North American Act. We will now examine each section of the system in detail to see what functions they perform.

The Crown

Under the terms of the B.N.A. Act of 1867 (Section 9), The Queen has authority over the Executive Government and over Canada. The functions of the Crown in Canada are discharged by the Governor-General in accordance with established principles of responsible government.

The Queen seldom personally discharges the functions of the Crown in respect to Canada except on such occasions as the periodic appointment of the Governor-General which is done on the recommendation of the Prime Minister of Canada.. On the occasion of a Royal visit, the Queen may participate in those ceremonies that are normally carried out in her name by the Governor-General, such as the opening and dissolution of Parliament, the assent to Bills passed by the House of Commons and the Senate, and the granting of a general amnesty.



The Governor-General

The Governor-General of Canada is appointed by The Queen as her personal representative on the advice of the Prime Minister of Canada. The Governor-General serves for a period of five years, but this may be extended.

One of the most important responsibilities of the Governor-General is to ensure that the country always has a government. If the office of the Prime Minister becomes vacant because of death, resignation or defeat of the government in the House of Commons, the Governor-General must see that the office of the Prime Minister is filled and that a new government is formed. The Governor-General also summons, prorogues, and dissolves Parliament on the advice of the Prime Minister. The Governor-General signs Orders-in-Council, commissions and many other state documents, and gives assent to Bills that have been passed in both Houses of Parliament and which thereby become Acts of Parliament with the force of law.

In Canada, as in other constitutional monarchies, there is a clear division between the executive and representational functions of state. The Prime Minister, as the elected political leader of the country, is the chief executive and head of the government. The Governor-General, on the other hand, is not involved in any way in party politics or political affiliation and is, therefore, in a position to represent Canada as a whole and to speak for Canadians on ceremonial and state occasions. In effect, the Governor-General has become an important symbol of unity of Canada and of the continuity of its institutions and national life.

The Governor-General is Canada's host to visiting heads of state and other distinguished visitors from abroad; and lends patronage in support of a great variety of activities throughout the country. The Governor-General also receives the Letters of Credence of Ambassadors appointed to Canada, receives Commonwealth High Commissioners on appointment and holds investitures for the conferring of honours and awards.

The Prime Minister

The Prime Minister is the leader of the political party requested by the Governor-General to form the government, which almost always is the leader of the party with the strongest representation in the House of Commons. The position is one of exceptional authority stemming in part from the success of the party at an election. The Prime Minister chooses the cabinet. When a member of Cabinet resigns, the remainder of the Cabinet is undisturbed; when the Prime Minister vacates office, this act normally carries with it the resignation of all those in the Cabinet.

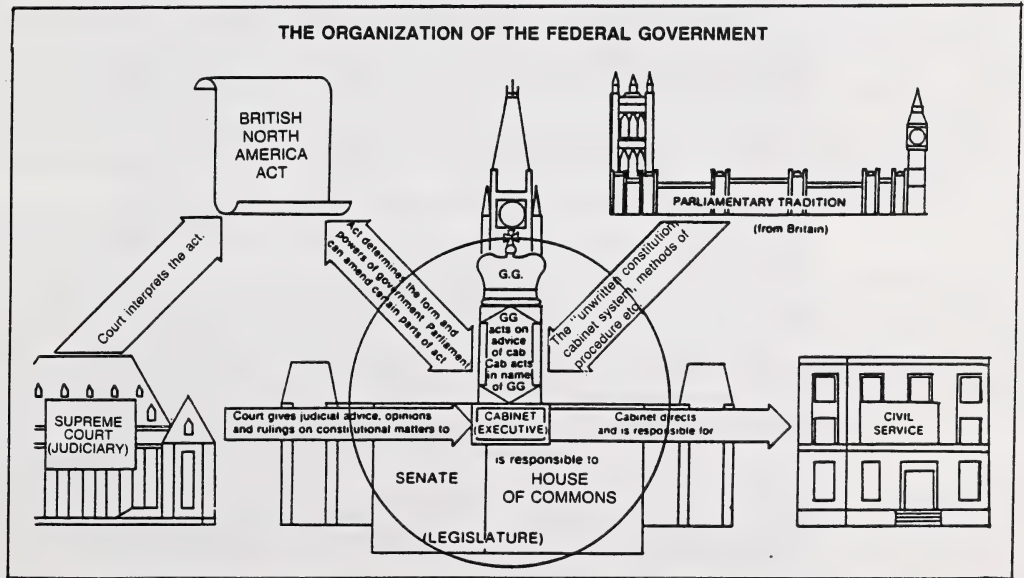
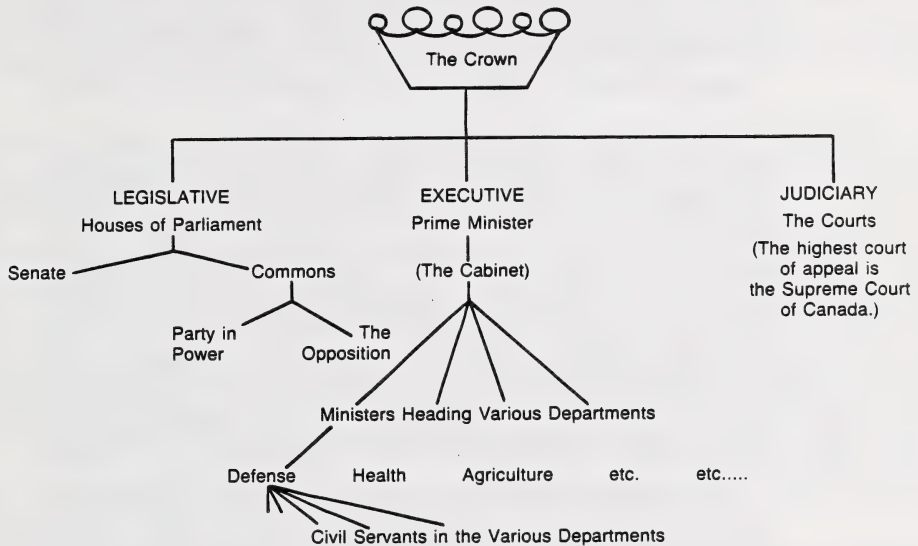
One source of the authority of the Prime Minister lies in the prerogative to recommend the dissolution of Parliament. This prerogative, which in most circumstances permits the Prime Minister to precipitate an election, is a source of considerable power.

Another source of authority derives from the appointments which the Prime Minister recommends including Cabinet Ministers, Lieutenant-Governors of the provinces, provincial administrators, Chief Justices of all courts, senators, and senior executives of the Public Service. The Prime Minister also recommends the appointment of a new Governor-General to the Sovereign, although this normally follows consultation with the Cabinet.

The Cabinet

The Cabinet's primary responsibility in the Canadian political system is to determine priorities among the demands expressed by the people and to define policies to meet those demands. The Cabinet is a committee of Ministers chosen by the Prime Minister, generally from among members of the House of Commons, although one or two Cabinet Ministers are usually chosen from the Senate, including the Leader of the Government in the Senate. It is unusual for a senator to head a department of government because the Constitution provides that measures for appropriating public funds or imposing taxes must originate in the House of Commons. If a senator headed a department, another Minister in the House of Commons would have to speak in respect of its affairs.

Functions of the Federal Government



Each Cabinet Minister usually assumes responsibility for one of the departments of government (called a portfolio), although a Minister may hold more than one portfolio at the same time or may hold one or more portfolios and one or more acting portfolios. Ministers without portfolio may be invited to join the Cabinet because the Prime Minister wishes to have them in the Cabinet without the heavy duties of running a department, or they may be invited to join the Cabinet to provide a suitable balance of regional representation.

Of course, no cabinet minister who takes over and administers a government department will have full knowledge of all its workings at the beginning. Though the Prime Minister will usually look for ministers whose background and experience give them special qualifications in the field administered by their particular departments, such individuals may not always be available. What is expected of ministers is that they will bring to the job qualities of intelligence, integrity, common sense, and leadership, and the ability to grasp the essentials of a problem quickly in any field, to listen to the pros and cons of various courses of action from expert advisers, and then to make a decision. These professional abilities facilitate sound and efficient administration of a portfolio, however, it would be unrealistic to pretend that all ministers possess all of these desirable qualities. In choosing ministers, the Prime Minister must do the best that is possible with the individuals who are available.

In Canada, almost all executive acts of the government are carried out in the name of the Governor-General in Council (such acts are called Orders-in-Council). The Committee of the Privy Council (the Cabinet) makes submissions to the Governor-General for approval, and the Governor-General is bound by the constitution to accept them.

Although some of these submissions are of a fairly routine nature and do not require much discussion in Cabinet of the policy underlying them, others are of major significance and require extensive deliberation, sometimes covering months of meetings of officials, as well as of the full Cabinet. In addition to the determination of the policy underlying the executive acts of the government, there are literally hundreds of other policy issues that must be resolved during the course of a year.

Most of these Orders-in-Council are merely administrative, and concern appointments, contracts, and questions of departmental routine; but sometimes they are of great importance and are legislative in nature. In view of the fact that thousands of less inclusive Orders-in-Council are passed each year, the more inclusive Legislative Orders-in-Council make the task of turning out parliamentary laws more efficient. If, however, the Cabinet uses them to replace the legislative function of Parliament, as did happen to a great extent during World War II, then they can become a serious threat to our democracy and to the supremacy of Parliament. Thus, one of the most important functions of the members of the House, and particularly of the members of the opposition, must be to see that the Cabinet does not overstep its authority through indiscriminate use of Orders-in-Council, and so encroach on and weaken the powers of Parliament. The Cabinet also carries out a number of other important duties in the name of the Governor-General, such as the appointment of judges and the pardoning of criminal offenders.

Cabinet must consider and approve the policy underlying each piece of proposed legislation. After it is drafted, proposed legislation must be examined in detail so that each clause and punctuation mark receives Cabinet approval. Proposals for sweeping reforms of large areas of government organization or administration, and policy to be adopted in fundamental constitutional changes or at a major international conference are among the issues which, on occasion, demand this extensive and detailed consideration.

Today's cabinet system of government has developed gradually, and its origins go far back into English history to the time when the King alone controlled the executive power, but had a Privy (i.e. private) Council to give advice if requested. The King could, and often did refuse to heed this advice. Gradually, however, he lost his executive powers to a small committee of the Privy Council, and this is the origin of the Cabinet, which is made up of the monarch's ministers, the leader of them being known as the Prime (i.e., first) Minister of the King (or Queen). As this cabinet system developed in England, especially in the second half of the 18th century, this small group continued to act in the monarch's name, but more and more the monarch became a figurehead. Yet nothing new was added; nothing visible was taken away. The same figures were on stage, but the importance of their roles was reversed; the emphasis had been changed. The advisers became the rulers, and the ruler now had to accept their advice. The executive power had passed into the hands of a committee of members of Parliament, who had to have the support of a majority in the House of Commons.

But the fact that nothing visible was changed makes it difficult for many people to understand the operation of our cabinet system. Here we have the Queen still on the throne, giving her assent to laws passed in her name, and yet not actually ruling. To complicate the situation a bit more, the Queen and the Governor-General, as we have seen, still have a part to play. Like the Queen, the Governor-General has the right to be informed of what the Cabinet is doing, and to advise and warn the Cabinet, even though it may not accept this advice. Through these two rights the Governor-General may exercise some influence. If, for example, no party has an overall majority in the House of Commons, the Governor-General may have to decide whom to call on to form a government. In the main, however, the Governor-General is there to preserve traditional rules and customs if and when such action is needed.

As we have said, it is the Cabinet that really exercises the executive power in our parliamentary system. But the power and importance of the Cabinet rests entirely on custom and precedent. Nothing is said about the Cabinet in the written part of our constitution, that is, the British North America Act. Thus cabinet government is really an informal arrangement unrecognized by the laws of the land - though not, of course, contrary to those laws. The only body authorized by the B.N.A. Act to advise the Governor-General is the Privy Council.

When cabinet ministers are appointed, they are at the same time made a member of the Queen's Privy Council for Canada. Since Privy Councillors hold office for life, the full Privy Council includes not only cabinet ministers in office, but all ex-cabinet ministers as well. It also includes a number of other distinguished people. However, the full Privy Council almost never meets as a body since it really has no functions to perform. Its only active part is the Cabinet, which acts as a committee of the Privy Council advising the Governor-General on behalf of the whole Council.

The crucial factor enabling our whole constitutional system to work smoothly is that the Cabinet is technically a committee of the Privy Council and the Council's only active part. Thus when the B.N.A. Act speaks of the Privy Council, it means, in effect, the Cabinet. That is why the formal executive decisions of the Cabinet are issued as orders of "The Governor-General-in-Council," or, more briefly Orders-in-Council. It is also why cabinet ministers are known as "ministers of the Crown."

The cabinet system is in many ways the most remarkable system ever developed for linking the executive and legislative powers, while at the same time keeping them distinct. While its origins go back to the Middle Ages, its flexibility enables it to work successfully in the 20th century. It has provided the flexible joint between the monarch and Parliament.

THE PARTS OF THE LEGISLATIVE BRANCH

GOVERNOR GENERAL	The appointed representative of the Crown
PRIME MINISTER and CABINET Usually from House of Commons	The major advisors of the Governor General
SENATE Appointed	Appointed by the Governor General on the recommendation of the Prime Minister
HOUSE OF COMMONS Elected	

The Federal Legislature

The federal legislative authority is vested in the Parliament of Canada consisting of an upper house called the Senate, and the House of Commons. Yet strictly speaking it is incorrect to define Parliament in this way because Parliament also includes the Queen or her representative. It is true, of course, that the monarch's power to govern, which was once almost supreme, has been taken away. In fact, the history of Parliament in Britain is largely the story of the way in which the House of Commons gradually gained control of the monarch's power, so that today the Queen has no direct power to control the affairs of government.

The Senate

The second part of the legislative branch is known as the Senate or Upper House. Section 23 of the British North America Act outlines the following qualifications for senators:

- (i) they shall be of the full age of 30 years;
- (ii) they shall be either a natural-born subject of the Queen or a naturalized subject;
- (iii) their real and personal property shall be together worth \$4,000.00 over and above their debts and liabilities;
- (iv) they shall be resident in the province for which they are appointed.

Until the passage of "An Act to make provision for the retirement of members of the Senate," assented to on June 2, 1965, senators were appointed for life. This Act set 75 years as the age at which any person appointed to the Senate would cease to hold this position. All appointments are made by the Governor-General after nomination by the Prime Minister and Cabinet. They represent the various areas or regions of Canada — the West (24), Ontario (24), Quebec (24), the Maritimes (24), and Newfoundland (6), the Yukon and the Northwest Territories have one (1) each. Altogether, there are 104 members in the Senate. The business of the Senate is conducted under the direction of a Speaker who is a member of the Senate and is chosen by the Prime Minister and Cabinet.

Before a Bill goes to the Governor-General for consent it must have been passed by the Senate as well as by the House of Commons. While the legislative power of the Senate is not so great as that of the House of Commons, its role is by no means formal. It may initiate any Bill except one for the levying or spending of taxes, and it may also amend or reject Bills coming to it from the House of Commons. Its traditional role is one of taking a "sober second look" at legislation submitted to it by the House of Commons.

The fact that the Senate has much less power and influence than the House of Commons is due to a number of reasons. One is that the executive branch of the government (the Cabinet) is not responsible to the Senate. It pays little heed to the Senate, though it has often drawn one of its members from it. Consequently the Senate has relatively little influence on the body that really runs the government. Secondly, the prestige of the Senate has been undermined in the past by the custom of using senatorial appointments as rewards for services to the party in power. Many senators, therefore, have already reached or may even have passed well beyond the normal age of retirement before being appointed, so that their most active and fruitful years are behind them. Then again, since senators are not elected and are not dependent for their office on popular support, they cannot claim to represent the will of the people in any situation in which they might find themselves in opposition to the House of Commons. The Senate therefore tends to be conservative and cautious and not to oppose the House of Commons on any important issue. Its best work is probably done in the amendment and improvement of Bills.

The chief function of the Senate is legislation, that is, the consideration and passage of Bills which it either originates or receives from the House of Commons. The legislative procedure which is followed is broadly that used in the Commons (discussed later), although the Senate lays more stress on its committee work and less on formal debate. One part of its activity is devoted to private Bills. Most of this work takes place in committee, and is cheerfully relinquished by the Commons, for which these matters have little interest. The Senate also discusses resolutions on various questions which seem to be of general concern, but the educational value of such debates on public opinion is slight because the public itself rarely displays any interest in the Senate proceedings. Special committees of the Senate conduct investigations on specific topics or proposed legislation, on which occasions they gather evidence, interrogate witnesses, and submit reports of their findings. Some of these proceedings, while not directly legislative, are nevertheless highly desirable, for they prepare the way for further legislative action.

The Senate has frequently opposed the House of Commons on legislation. While it has been much more disposed to reject Bills from the Commons when under the control of a party which was not in a majority in the House, its tendency to amend Bills has not been noticeably affected by party influences. Despite its independent position, it has not been indifferent to the popular will, and it has even gone so far as to acquiesce in the passage of a Bill of which it disapproved simply because public opinion on the measure has been decisively expressed at a general election. Lacking clear evidence of the state of public opinion, however, the Senate has felt justified in using its own judgement and has amended and rejected Bills freely.

Although the Senate cannot initiate money Bills, the question whether the Senate has the constitutional power to amend a money Bill has long been a matter of dispute between the two houses. The House of Commons has always insisted that the Senate has no such power. The Senate, on the other hand, has never accepted this in theory, and in practice has repeatedly made its point, even amending Bills which have dealt exclusively with matters of finance. In these cases the House has often accepted the amendments, but has added the proviso that they were not to be considered as constituting a precedent.

In summary, it may be said that the Senate, although severely handicapped, has been able to do some genuinely useful work. It revises and checks legislation sent up from the Commons; it conducts occasional investigations; it takes the greater part of the work load of private Bill legislation from the overworked Commons.

Senate Reform

The reform or abolition of the Senate has for many years provided the material for lively debate. A party which has few or no members in the Senate will always ardently demand a change; but no sooner does it gain office and acquire the power of appointing senators than it discovers unsuspected virtues in the much abused body. A government finds senatorships most useful as rewards for duty faithfully performed, as influences to produce immediate activity in the hope of recognition in the future, and as inducements to persuade members of the Commons to resign and vacate a seat for new or defeated Cabinet Ministers. Most of the smaller provinces, too, feel that their lot is a little more bearable with a few extra advocates in the Senate, even though these advocates may say little and may exercise a negligible influence on government policy.

The most important impediment to reform, perhaps, is the number and diversity of the plans which have been submitted as possible cures. No solution has been able to gain more than a few scattered supporters. The Senate will, in all likelihood, continue to exist as at present constituted for many years to come, not from any high esteem in which it is held, but largely because of its convenience to the dominant political party and the general indifference of the Canadian people.

The House of Commons

The House of Commons is the body which above all others represents the people of Canada. It therefore speaks, as no other part of the government can pretend to speak, for the people. It is through the House of Commons that the will of the democracy finds expression and is made effective, and it is for this reason that the House is not only the primary legislative authority but also the body to which the Cabinet must constantly turn for approval.

The outstanding characteristic of the House is therefore its representative character. It is expected to reflect with approximate accuracy the ideas and wishes of the different races, classes, religions, and other groups into which the country is divided, and yet at the same time recognize the overriding interest of the nation as a whole. The composition of the House and the manner of its election forces it to keep in constant touch with the people it represents. Moreover, the fact that it is not a body of brilliant experts, but a fair sampling of the national population, enables its members to speak for the electorate with genuine authority and understanding. The Cabinet thus finds the House an invaluable means of retaining contact with fluctuations in public opinion.

The House of Commons, while performing its very important function of reflecting public opinion, must also in considerable measure lead and educate it, and the two processes of leading and following are always operative. The public is ill-informed on many matters, and as the House dare not advance too far beyond what the people want, it finds itself frequently considering, debating, and investigating many matters, not with the purpose of arriving at an immediate decision, but rather of gradually preparing the minds of the people for policies which will come up for possible adoption in the future. Thus a proposal may be debated for several sessions and perhaps investigated by committees of the House before it is finally passed and takes its place in the statute books.

While the House must make many decisions, it is not primarily an initiating body: its function is essentially one of review, approval, and criticism. The Cabinet initiates, the House (and, to a much less degree, the Senate) takes the proposals and subjects them to a thorough examination before giving assent. A casual observer, influenced by the very rare occasions on which the House forces amendments on the Cabinet, might suppose that this power of criticism is rarely effective; but such a conclusion would be superficial. The supporters of the Government acquiesce in its proposals because they have already exerted their influence within the party caucus, and their best endeavours are therefore devoted to expediting the passage of these proposals through the Commons. The Opposition's attacks on Government measures may seem to be futile, but the results of its efforts are not necessarily visible in the House. Some of these efforts will not bear fruit until the next election. However, many of the possible objections of the Opposition were considered by the Government when drafting its bills, and these bills have in all probability already been toned down

in anticipation of the criticisms which the Cabinet expected to be raised in the legislature. For it can be assumed that no Government willingly gives to the Opposition any ammunition which can be effectively used to its detriment either in Parliament or in the country.

The House of Commons also supervises much of the work of the Cabinet; and day after day the Opposition members ask questions, plan attacks, voice grievances and demand explanations. The nation depends on the House to ensure an honest and efficient administration, and the chamber responds by keeping the Cabinet under scrutiny at all times. As a last resort, the House can declare its lack of confidence in the Cabinet, and thus force a resignation or dissolution.

Finally, the Commons singles out ability and supplies a most valuable preparation for future Cabinet members. The great majority of the ministers come from the House and serve their apprenticeship there; and the capacity of potential ministers is in large measure judged by their performance as private members. There is general agreement that no other kind of preliminary preparation is as effective as years spent in the House of Commons. New Cabinet members, while in a sense untrained, nevertheless come to their task with a valuable background of experience which serves as a very satisfactory substitute.

The formal decisions made by the House of Commons are of four kinds:

- (1) statutes or acts of Parliament;
- (2) the imposition of taxes and the authorization of expenditures, which are really only a special kind of statute;
- (3) resolutions, such as those requesting the British Parliament to amend the British North America Act, or those calling upon the Governor-in-Council to remove a judge;
- (4) formal declarations of state policy, which are not self-operating, but which the executive will certainly carry into effect, such as those dealing with treaties or the declaration of war.

Representation

Representation in the House of Commons is based on population and is apportioned by provinces. An adjustment is made every ten years after the census has been taken. The general rules of distributing the seats are as follows:

- (1) The total number of members is set at 295, though this may be slightly increased (see (3) on the next page).
- (2) This distribution of seats among the provinces is subject to the application of three special rules:

- (a) A province must, as a minimum, have as many members in the House of Commons as it has senators.
 - (b) No province shall have its representation reduced by more than 15 per cent below the representation to which such province was entitled at the last redistribution.
 - (c) No province shall have its representation reduced if by such a reduction it would have fewer members than any other province with a smaller population.
- (3) If extra seats result from (2)(b) and (2)(c) above, they are added to the total of 295.

Electing A House of Commons

Let us assume that the House of Commons has just been dissolved and that the people of Canada are now to elect a new House. As soon as Parliament is dissolved, the Prime Minister consults the Chief Electoral Officer, who is a permanent civil servant, and an election day is decided on. According to the Dominion Election Act, election day must be a Monday, or a Tuesday if Monday is a holiday in the week chosen. In each constituency a returning officer is appointed by Order-in-Council, and when the date is chosen, election writs are sent out, directing the returning officers to prepare for the election. These preparations take seven weeks. During this time the following events take place.

- (1) Enumerators, appointed by the returning officer, make a door-to-door survey of all dwellings in their area and compile a preliminary list of voters.
- (2) The preliminary lists are printed, and posted in prominent public places.
- (3) Any citizens whose names have been erroneously omitted may appear before a revising officer and ask that their name be included in the revised list. A voter is also entitled to protest the inclusion of a name believed to be improperly listed.
- (4) The revised lists are printed.
- (5) The candidates are nominated.
- (6) The ballots are printed.

The returning officers are responsible not only for these preliminaries but also for the conduct of the election itself. They must arrange for polling stations and must appoint deputy returning officers to take charge at each of them. They also have a number of duties to perform after the polling has finished.

Since the quality of our government depends on the quality of the people elected to Parliament, the selection of candidates is a very important matter. Almost all citizens may offer themselves to the voters of a constituency as a candidate without the backing of any political party, and they will then be known as an "independent." In each constituency, the actual choosing is done by the party organization which holds nominating conventions for this purpose. Each party holds its own convention, at which only members of the party are present. Individuals who wish to become that party's candidate for that particular constituency make a speech stating their political views and the policies they propose to support. After listening to all the speeches, the convention then elects one of the applicants to be the party's candidate for the constituency.

After each party convention has made its choice, it sends the official nomination to the returning officer. The nomination must carry the signatures of ten voters in the constituency and must be accompanied by a deposit of \$200. Candidates who in the election get less than half as many votes as the successful candidate must forfeit their deposit. This is intended to ensure that only people who feel that they have a real chance of being elected shall become candidates.

Qualifications

The qualifications of members of the House of Commons are simple: they must be a Canadian citizen and 18 years of age. They are, however, disqualified if they are a senator, a member of a provincial legislature, a government contractor, or the holder of a salaried government position. Members are not legally required to live in their constituency, although there is a tendency for most members to do so.

Term

There is no definite term for a member of the House, except that it cannot exceed five years. Inasmuch as Parliament can be dissolved and a new election held at any time, the term may be anything from a month or two up to the maximum five years. The usual life of a Parliament, however, is about four years. No Prime Minister is anxious to bring about an election before it is necessary; though on the other hand, no Prime Minister wishes to have the date of the election fixed by the calendar, for there is a decided advantage to be gained if the Government is able to select what it considers to be an appropriate time and suitable issues for the contest. While this variable factor adds an undesirable element of uncertainty to elections, it has the great merit of obtaining an immediate electoral verdict on urgent public questions.

Parliamentary Privilege

Members of both Canadian houses (Commons and Senate) enjoy special "Privileges" which are copied from those of the British Parliament.

Individual members, for example, have complete freedom of speech in their capacity as members and they cannot be prosecuted in any court for anything which they have said in the House or in its committees. A member cannot be assaulted or intimidated in the House or in going to or from the House; nor can they be arrested for minor offences while Parliament is in session.

The House also enjoys collective privileges as a legislative body. It has the power to preserve order and discipline in all its proceedings, and also to punish anyone outside the House who is guilty of making scandalous or libellous statements concerning its proceedings or its members. It may also refuse to seat a person who has been duly elected as a member, and it has power to expel any member of the House.

While some of these privileges may seem excessively generous, the main purpose is clear and free from any serious objection. It is highly desirable, for example, that the members should be given every inducement to express themselves freely and not be subjected in the performance of their duty to any kind of intimidation from any source. It is also imperative that the House should be able to conduct its business in a seemly and orderly fashion. While it is true that certain of these privileges may sometimes be misused, the risk of an occasional misuse is far preferable to the dangers which would likely occur if these exceptional powers and safeguards were removed.

The Federal Franchise

The present federal franchise laws are contained in the Canada Elections Act. Generally the franchise is conferred upon all Canadian citizens who have attained the age of 18 years and are ordinarily resident in the electoral district on the date fixed for the beginning of the enumeration at the election.

Persons denied the right to vote are: the Chief Electoral Officer and the Assistant Chief Electoral Officer; judges appointed by the Governor-in-Council; the returning officer for each electoral district; persons undergoing punishment as inmates of any penal institution; persons restrained of their liberty of movement or deprived of the management of their property by reason of mental disease; and persons disqualified under any law relating to the disqualification of electors for corrupt or illegal practices.

The Opening of Parliament

One of the Prime Minister's first tasks after a general election is, in consultation with the Governor-General, to set a date for the opening of Parliament. On the morning of the opening day the members of the House of Commons meet to elect a Speaker. The Speaker's main duties are to preside over the House, to see that all debates are carried out in an orderly fashion, and to ensure that all the rules of the House are observed. The prospective Speaker is nominated by the Prime Minister and is always a member of the government party. However, the Speaker must be completely impartial in dealing with members of all parties in the House, and must be careful to administer the rules in such a way as to not favour any political party. The Speaker has no vote in the House except in the event of a tie. Both the House of Commons and the Senate meet in the Senate Chamber and listen to the Governor-General read the Speech from the Throne. This speech is not written by the Governor-General but by the Prime Minister and the Cabinet. It refers to important public issues facing the government and outlines the legislation which is going to be introduced to deal with them. A full debate on the speech is the first important business of the session. This gives a good survey of important problems and allows all parties in the House to state their views about them before the House gets down to detailed business.

Parliament in Session

A session of Parliament usually begins early in the year and lasts several months. If special sessions are needed, they may be called at any time and for any length of time, but not more than twelve months may elapse between sessions. This is laid down in the British North America Act, but it is also made necessary by the fact that taxes are not authorized by Parliament for more than one year at a time.

The government's role, in general, is to explain and defend its policies and to pilot through Parliament the legislation by which it proposes to implement them. Legislative proposals are brought before the House as Bills. There are different kinds of Bills but the most important ones, from the point of view of Parliament, are those which deal with matters of public interest (such as taxation, tariffs, the armed forces, civil rights, etc.) and which the government brings forward as part of its general legislative program. These are known as government Bills and are almost always introduced by the Minister whose department is chiefly concerned or else by the Prime Minister. A Bill concerning income tax, for example, would usually be introduced by the Minister of Finance.

Government Bills are the ones by which the government is prepared to stand or fall. If a government Bill is defeated, the adverse vote is taken to be a vote of "no confidence" in the government. In this event, the Prime Minister will almost certainly advise the Governor-General to dissolve Parliament so that a general election can be held. In certain cases, however, the Prime Minister may simply resign and advise the Governor-General to ask the leader of the Opposition to form the government.

Not all Bills, however, are government Bills. Any member who is not a minister can bring in what is called a private member's Bill. The matter with which such a Bill is concerned may be of wide public interest but will not be one on which the government has expressed any policy or on which it is particularly interested in securing legislation. Because the government assumes no responsibility for these Bills, members vote as they wish regardless of their party affiliation, and the defeat of such a Bill does not endanger the government's position.

The role of the Opposition in Parliament is a vital one. Without it there could be no democratic government, for if there were only one party in the House of Commons, there would be no check on its activities and no way of making it responsive to public opinion. The presence of an Opposition means that the government must justify and defend its measures under criticism and gives the voters an opportunity to hear both sides of the case. Should the government lose the support of the country, the Opposition stands ready to provide an alternative government of experienced parliamentarians who can take office in a constitutional and orderly manner.

The Opposition's role is not to oppose or obstruct merely for the sake of opposing. It may, and often does, support the government when it thinks the government is acting wisely, but its chief duty is to criticize and to show how it thinks the government's policy should be improved. In this way it keeps the government "on its toes" and performs a valuable service because few governments can be at their best for long without an able and public-spirited Opposition. The Opposition is usually allowed equal time to speak in the House; for much of the time, therefore, members are listening to criticism of government policies.

A word must be said about the position of private members in the House (i.e., members other than ministers). Private members, of course, take part in the debates and are expected to support the policies of their own party. They are also expected to vote with their party since — unless they are independents — it was on this understanding that they were elected. This does not mean that they must be merely passive followers of the party's leaders. The members of each party represented in the House hold private meetings from time to time to discuss party policy. Such a meeting is known as a *caucus*. Here members may speak their mind and may, if they wish, criticize and attempt to modify their own party's policy. However, once the party's policy has been decided, everyone in the party is expected to support it. Each party appoints an official, known as the *Whip*, one of whose duties is to keep in touch with members of the party when they are absent from the House and to see that they are present to vote with their party when their vote is needed.

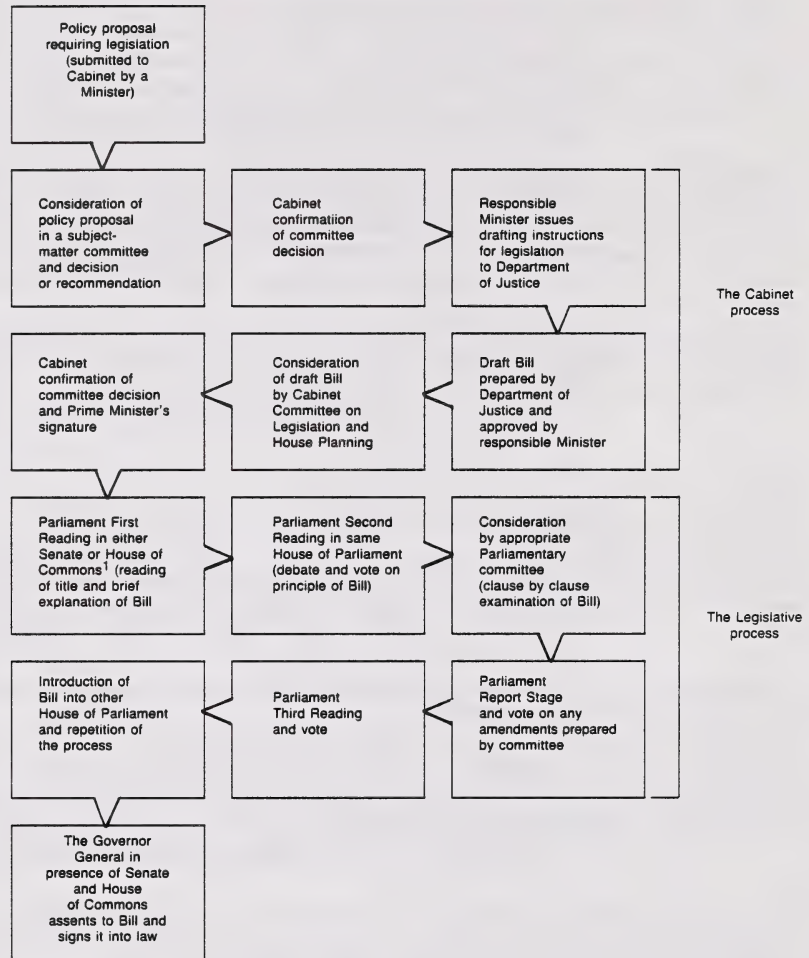
In addition to party duties, members of Parliament must remember that they are the representatives of all the people in their constituency, even of those who did not vote for them. They must know the needs of their constituency and work to obtain the local improvements and government services to which it is entitled. At the same time they must serve the wider interests of their province and of the country as a whole.

The Passage of Bills

Every Bill, before it becomes law, must be passed by a majority in each House of Parliament and must receive Royal Assent, i.e., the signature of the Governor-General as the Queen's representative. When the Bill has gone through this process and has become law, it is known as an Act or statute. Though any Bill except a money bill may be introduced in either House, nearly all Bills are introduced in the House of Commons.

In each House a Bill will have three readings. The first is simply an announcement of its title and is not followed by a debate or a vote. At the second reading, by which time the Bill will have been printed and circulated, there is a full and formal debate on the principle of the Bill as a whole, followed by a vote.

Passage of legislation



1. All money Bills must be introduced in the House of Commons.

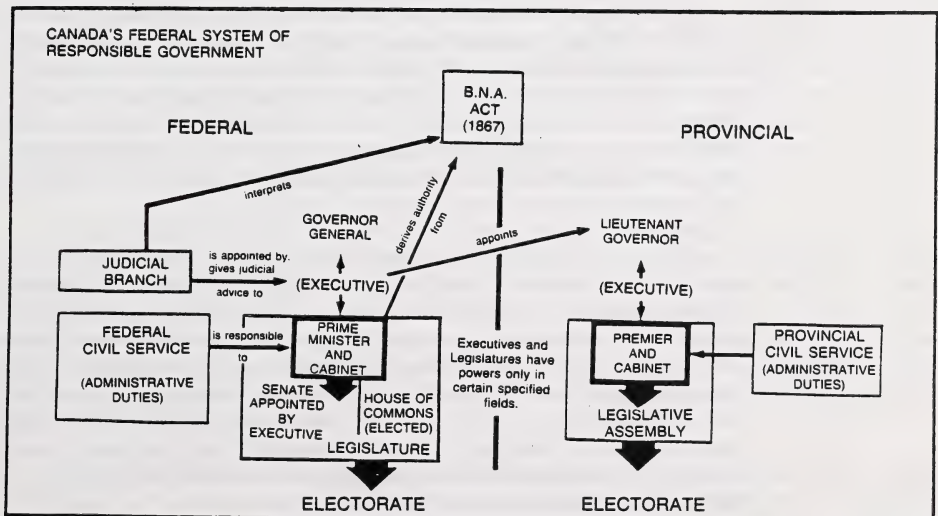
At this point the Bill may be referred to one of the standing committees of the House. These standing committees are composed of members of the House and always have a majority of government party members. Each committee specializes in one particular field of public affairs, e.g., industrial relations, banking and commerce, external affairs, and so on. The committees have power to call citizens from all walks of life to testify before them, and people who are vitally interested in a particular Bill may also appear if they wish. In this way a wide range of opinion is obtained, and the attention of the public is drawn to the Bill. After discussion, and deliberation on the details of the Bill, the committee then prepares a report, usually favouring the Bill and perhaps suggesting amendments, and the report is then delivered to the House of Commons.

Whether or not the Bill is referred to the standing committee, the next step is for the House to go into a Committee of the Whole, that is, a committee consisting of all the members of the House. Here the Bill is debated not by formal speeches but by informal discussion as in any committee meeting. In this debate the Bill is discussed in detail and may be amended, and it is voted on clause by clause. When the Committee of the Whole has done its work, the amended Bill is reprinted ready for the third reading in the House. At this reading the Bill may be debated in whole or in detail, but the debate is usually brief, since by this time the Bill has been thoroughly discussed.

After this the Bill goes to the other House where it goes through exactly the same procedure. If the Bill is amended in the second House, it must go back to the "second reading" stage in the first House. If it is defeated in the second House, then it must go right back to the beginning of the procedure.

A formal vote of the House is called a division. During the passing of a Bill through its various stages, there may be a number of decisions without a formal vote, but there is usually a division on at least the second and third readings. A division in the Canadian House of Commons is taken by calling the roll and having each member declare their vote.

After being passed by both Houses, the Bill then goes to the Governor-General to receive the Royal Assent. It is then no longer a Bill but an Act. Every Act is given a number. The British North America Act of 1867, which of course is an Act of the British Parliament, is numbered 30 and 31 Victoria, C.3. This means that it is Chapter, or Act, No. 3 of the Parliament which met in the thirtieth and thirty-first years of Queen Victoria's reign. The Civil Rights Act of the Canadian Parliament is numbered 8 Elizabeth, C. 79.



Where a stenographic report is made and printed, as is done for the Houses of Parliament at Ottawa and London, it is called *Hansard* after the name of the man in England who began printing reports of parliamentary debates in 1752. Anyone may obtain, at a very small cost from the Queen's Printer, the record of any day's debates.

Dissolution of Parliament

When a Parliament is ended, it is said to be dissolved but when it merely reaches the end of a session, and the same Parliament will reassemble at the next session, it is said to be *prorogued*. There are several reasons why a Prime Minister may advise the Governor-General to dissolve Parliament, other than that its full term has expired. This may be done because the government has been or is about to be defeated on a vote of confidence. In these circumstances the Prime Minister usually has no option but to "take the matter to the country" and let the country show by means of a general election whether it supports the government or not. If the government party has only a minority of the seats in the House of Commons (the seats being divided between three or four parties), or if it has only a small majority, the Prime Minister may feel that the government has enough support in the country to win more seats in a general election.

By the time a Parliament has reached its third or fourth year, the Prime Minister, even if the government has a comfortable majority in the House, will probably be looking ahead and seeking a moment when it is felt that the government and its policies are popular enough in the country to enable it to win a general election and return to office for another five-year term. Or again, if there are important matters before the House on which feeling in the country is strong and divided, the Prime Minister may decide to let the people voice their opinion in a general election.

Canada and the International Community

The responsibilities of citizenship are not limited to the part that each of us plays within the local, provincial or national community. Canada herself is part of a wider community of nations with whom she shares common interests and ideals and also a part of the world-wide community of the human race. The world is also a single community in the sense that, because of modern communications and transport, no part of it can cut itself off and remain isolated from the rest. A disturbance in any part of the world has effects that are felt by everybody; nor can there be security for anyone unless there is security for all.

Unlike national communities, the wider communities to which we belong do not have governments. In the eyes of some people, this is a grave shortcoming; until there is a single world government possessing a monopoly of armed force, they argue, there can be no lasting international peace or order. Others believe that the notion of a peace enforced by a world government is a delusion, and a dangerous one. Whatever the pros and cons of the matter, there is evidently no possibility that a world government will be formed in the foreseeable future. For the present, therefore, the peace and order of the world depend upon voluntary co-operation between sovereign states and on the willingness of the nations of the world to enter into and adhere to agreements with one another.

International law governs the conduct of our citizens and government in its relations with foreign governments and their citizens. It is based on centuries of custom and accepted usage by the nations of the world. It lays down international rules of conduct during wars, for belligerents and for neutrals; it regulates the use of territorial waters for navigation and fishing and air space for flyers. Much international law is also created by contracts (treaties) between countries regarding such matters as fishing rights, extradition (the handing over of an alleged criminal under the provisions of a treaty or statute by one state to another having jurisdiction to try the charge), the use of radio and television frequencies, and flight paths for aircraft.

In case of international disputes, the nations involved often turn to The Hague International Arbitration Court in Holland, by whose decision they agree to abide. However, as yet there is no efficient international law enforcement agency with the power to impose penalties. The more serious disputes between nations can only be handled by diplomacy and may result in the breaking of diplomatic relations, or in war.

It is true that in some quarters there is a tendency to disparage international law, even to the extent of questioning its existence and value. There are two main reasons for this:

- (a) the generally held view that the rules of international law are designed only to maintain peace rather than improve the calibre of international cooperation.
- (b) few people are aware of the many international activities that affect the lives of citizens living abroad and travellers, let alone issues that affect larger groups of people.

Actually, by far the greater part of international law is not concerned at all with issues of peace or war. In practice, legal advisors to foreign embassies and practicing international lawyers daily apply and consider settled rules of international law dealing with an immense variety of matters. Some of these important matters which arise over and over again in practice are claims for injuries to citizens abroad, the reception or deportation of aliens, extradition, questions of nationality, and the interpretation of the numerous complicated treaties or arrangements now entered into by most States with reference to commerce, finance, transport, and other issues.

Breaches of international law resulting in wars of aggression naturally receive a great deal of adverse attention, and from them the public incorrectly deduces the complete breakdown of international law. The answer to this criticism is that even in wartime there is no absolute breakdown of international law, as many rules affecting the relations of belligerents to one another or with neutrals are of vital importance and for the most part are strictly observed. Another consideration is worth mentioning. Aggressor states repeatedly justify their violation of the peace by invoking rules of international law in their favor.

It is possible to argue further that in state law, breaches, disturbances and crimes take place, but no one denies the existence of law to which all citizens are subject. Similarly, the recurrence of war and armed conflicts between states does not necessarily warrant the conclusion that international law is non-existent.

Finally, it is incorrect to regard the maintenance of peace as the entire purpose of international law. Its main purpose is rather to form a *framework* within which international relations can be conducted and to provide a system of rules facilitating international intercourse; and as a matter of practical necessity it has, and will, operate as a legal system even when wars are frequent. It is, of course, true that the ideal of international law must be a perfect legal system in which war will be entirely eliminated, just as the ideal of state law is a constitution and legal system so perfect, that revolution, revolt, strikes, etc., can never take place and every individual's rights are speedily, cheaply, and infallibly enforced. Needless to say, however, lapses from such ideals are as inevitable as the existence of law itself.

One of the principal weaknesses of international law is the absence or ineffectiveness of punitive sanctions. Without coercive authority the declarations, resolutions, and even the "legally" binding decisions of international bodies are observed only when states so choose. Although these rules are observed in the great majority of cases, the seriousness of their non-observance has now become a matter of survival. The advantages of compliance with international rules and principles are indeed very great, and increase as the co-operative efforts of states increase. For example, the paramount interest of states in air safety and in certain basic health requirements has impelled compliance with standards imposed by the international community.

Other important fields, such as preserving the earth's resources, and controlling over-population and arbitrary violence, all of which are elemental factors in human survival, have not yet become subjects of sufficient international cooperative efforts. The recent accelerating interest in international cooperative efforts on the environment, recovery of seabed resources, and weather control indicate an ever-increasing reliance upon international community action to solve problems beyond the reach of any one nation.

Perhaps the greatest weakness of international law is its failure to devise adequate means to control force and violence. States have been reluctant to give this power to the United Nations or to regional organizations. As a consequence, peace continues to depend on the precariousness of what states consider to be their self-interest in complying with international law rules and principles. Strong nationalism, especially among the newly emerging states, and alleged demands of security by powerful states, at times, compel nations to act arbitrarily rather than cooperatively. However, world opinion is looking with increasing disfavor on the unbridled use of force by states in attempts to obtain their alleged "interests" and states cannot long ignore world opinion. It is, in fact, the crystallizing of world opinion in favor of international law, rules and legal institutions that offers the greatest promise for lasting world peace.

The Law of the Sea

The sea has long been a highway for commerce and war as well as a provider of food and other resources. At times, particular states have made strong efforts to assert exclusive control over vast maritime areas; but in modern international law it is recognized that beyond a certain distance from the coast of a state the sea is free for reasonable use by all nations. This "freedom of the seas," which by and large serves the common interest of all or most states, includes freedom of navigation, freedom to fish and exploit other resources found about the bottom of the sea, freedom to conduct military manoeuvres and weapons tests, and in time of war freedom to attack the enemy and interrupt communications. The general limitation on the exercise of these freedoms is that it must not unreasonably interfere with the use of the sea by other states.

The parts of the sea which are thus not subject to the sovereign control of any state are known as "the high seas." In time of peace, every state generally has exclusive control and jurisdiction on the high seas over the vessels which are entitled to fly its flag, including the power to punish crimes committed on board such vessels, and must not interfere with the vessels of other states. There are, however, certain exceptions, of which the shared right to seize and punish pirates is the most consistently recognized. The freedom of the seas is further regulated by multilateral treaties on such matters as conservation of certain stocks of marine animals, safety at sea, pollution, and protection of submarine cables.

The waters subject to the sovereignty of a state are of two kinds: internal (or inland) waters and the territorial sea (or territorial waters). Internal waters include not only rivers, lakes, and canals, but also maritime ports, harbors, bays, and generally all waters landward of the "base lines" from which the width of the territorial sea is measured. In internal waters, the sovereign rights and powers of the state are almost as great as on land. Foreign vessels have no general right of entry and navigation in internal waters, although merchant vessels of all friendly nations are commonly admitted to ports unless the latter are closed by express notice. While in port or other internal waters, foreign merchant vessels are subject to the jurisdiction of the coastal state, although the state of the flag of the vessel may also provide for the maintenance of order and for the punishment of crimes committed on board the vessel. By treaty and custom, important interoceanic canals are open to navigation by vessels of all states.

The *territorial sea* is a belt of water of specified width between the land territory (and internal waters) of a state on one side and the high seas on the other. Most countries today, Canada included, claim a territorial sea with a width of 320 kilometers (200 miles).

Within the territorial sea, the most important limitation on the coastal state's sovereignty is the right of innocent passage for vessels of other states. According to preponderant opinion, this right extends to foreign warships, particularly in international straits, as well as to merchant vessels. Coastal states commonly abstain from exercising certain kinds of jurisdiction over foreign vessels in innocent passage. They may, however, temporarily suspend the right of innocent passage in specified areas of the territorial sea, except in international straits.

Although the waters beyond the territorial sea are part of the high seas and not under the sovereignty of the coastal state, the latter may exercise reasonable control over foreign ships in "contiguous zones" adjacent to its territorial sea in order to prevent violations in its territory of its customs, immigration, or sanitary regulations, and to maintain its security. In recent years, a growing number of states have established zones adjacent to their territorial sea in which they assert control over fishing. It has been widely recognized, furthermore, that a state may exercise exclusive jurisdiction and control, virtually amounting to sovereignty, over the natural resources of the seabed adjacent to its territory and the subsoil beneath it to any depth at which the exploitation of such resources is feasible. The coastal state may pursue and seize on the high seas a foreign vessel for violating its laws if the pursuit was begun within its territorial sea or contiguous zone and continued without interruption.

The Law of Airspace

With the coming of powered flight in the twentieth century, the question of jurisdiction in airspace ceased to be academic and acquired great practical significance. Since World War I, it has been universally recognized that every state is sovereign in the airspace above its territory (including its territorial sea) and may exclude all foreign aircraft from it. In general international law, there is no right of innocent passage through such airspace. Only the airspace above the high seas is generally free, although some states have asserted and exercised without opposition the right to control, for security and traffic purposes, the flight of foreign aircraft above the high seas in certain zones adjacent to their airspace. Aircraft, like ships, have the nationality of the state in which they are registered, and for certain purposes are subject to the jurisdiction of that state even when they are in foreign airspace.

In contrast to aircraft, radio waves of foreign origin are commonly allowed to pass through the airspace of all states without special authorization so long as they cause no harm to the states over which the radio waves are transmitted.

The Responsibilities of States to Aliens

The need for some generally accepted standards to protect individuals who have entered or are doing business in countries other than their own has long been recognized, although the nature of such standards has often been a matter of controversy. The absence of such standards would hamper, if not make impossible, many mutually beneficial transnational activities, such as trade, travel, and investment.

Under general international law, a state is free to prevent entry of foreigners and to expel them even after an authorized entry. It is also free to control imports and exports and to impose tariff duties as it sees fit. It may deny to foreigners the right to own certain kinds of property (such as real property, ships; aircraft, or firearms), to organize corporations; to engage in business or other gainful occupations, and to participate in political activity.

In these and many other matters, international law does not forbid a state to discriminate in favor of its own citizens, in the absence of treaty obligations to the contrary. Similarly, in many matters a state may be free to discriminate between citizens of different foreign states. But in certain matters of fundamental importance to the individual - such as protection of life, personal liberty, and property - a state must generally treat foreigners at least as favorably as its own citizens. A large body of state practice and judicial decisions indicates, moreover, that a state must live up to an international minimum standard of treatment of aliens, regardless of how it treats its own people.

For example, if the officials of a state punish foreigners without a fair trial, expose them to inhumane treatment in prison, or arbitrarily seize their property, the state cannot excuse itself by pointing out to similar treatment meted out to its own citizens. The more advanced nations of the West, moreover, have long insisted with a large measure of success that foreign private property may not be expropriated without full compensation. In recent decades, however, this norm and the very concept of an international minimum standard have been challenged by many less developed nations and the Soviet bloc.

A violation of the standards of treatment of aliens exposes a state to diplomatic protests and claims of damages by the states whose citizens are the victims of the

violation. Such protests and claims, however, are generally premature until the individuals concerned have exhausted all the remedies which may be available to them under the law of the state alleged to have committed the violation.

The Application and Sanction of International Law

The daily reliance upon international law in the normal relations between states far exceeds in frequency, and probably in importance, its role in settling differences between nations. Minor breaches of the law occur frequently, but only exceptionally do states deliberately break through the framework to commit gross violations. This usually happens only in a major crisis when the very existence of a nation seems to be at stake. Even when a nation deliberately violates the law, it seeks to justify its conduct by reinterpreting the relevant norms or misrepresenting the facts.

The reasons why the law is obeyed in any system of public order may be summarized under three headings: (1) self-interest; (2) sense of moral obligation; and (3) habit. Of the three, self-interest is probably the most basic reason why international law is observed. Its norms have been developed by states to serve common interests and to facilitate mutual relations. Consequently, so long as states continue to be guided by these purposes, they are not likely to disregard the relevant norms. Probably the most important sanction of international law are the threats of disruption of international relationships and of retaliation. For example, a state which persistently violates the freedom of the seas invites retaliation and impairment of its maritime trade with the rest of the world. The sense of moral obligation should not be minimized as a reason for law observance, but its force varies from nation to nation and from individual to individual. At times, moreover, moral principle may clash with a legal norm. Habit is an important factor in the routine observance of the law when the vital interests of a nation are not at stake.

To facilitate cooperation among nations, a number of international organizations have been formed. The principal international organizations of which Canada is a member are briefly described.

The United Nations

In April of 1945, in accordance with agreements made by the Allied powers during the course of World War II, the representatives of fifty nations, including Canada, came together in conference at San Francisco. Here they drew up the charter of the United Nations, through which it was hoped that the nations of the world would be able to settle their disputes by the peaceful methods of discussion, negotiation, and arbitration, rather than by war. To a large extent, therefore, the United Nations is the visible expression of the world-wide community of which we have referred to.

Although the United Nations has not fulfilled all the hopes placed in it at the outset, it has had some notable successes to its credit. But compared with a system of government. The U.N. is handicapped by the fact that while it can pass resolutions and make recommendations, it has in most cases no power to enforce them. It can therefore function successfully only to the extent that its member-states are willing to abide by the decisions reached. However, even the force of world opinion, as expressed through the United Nations, can sometimes have a powerful deterrent effect on states that are tempted to ignore the principles laid down in the U.N. charter.

The usefulness of the United Nations, moreover, is not to be measured solely by its political successes and failures. Among its many branches are a dozen or more specialized agencies, such as the World Health Organization (WHO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the Food and Agriculture Organization (FAO). The international cooperation achieved through these bodies in the assault on disease, hunger, illiteracy, and other social and economic evils is a most hopeful development.

The Commonwealth of Nations

The Commonwealth has no formal organization, for it has come about through a long process of historical development. It consists of fully independent, sovereign states, the historical basis of whose unity is the fact that they were all at one time subordinate parts of the British Empire. The process of development from colony to sovereign state was one for which Canada set the pattern so that, next to Britain herself, Canada is regarded as the senior partner.

The only formal link holding the members of the Commonwealth together is the fact that they all recognize the British monarch as the Head of the Commonwealth. Each member has entered into this arrangement of its own free will and can withdraw at any time it wishes. The fact that former parts of the British Empire have chosen to remain associated however, is an indication of the strength of the interests and ideals they hold in common. Common economic interests have so far provided one strong bond - for example, the system of "preferences" by which Commonwealth countries admit certain imports from other Commonwealth countries at a specially reduced tariff rate. On the political side, the fact that all the Commonwealth members have inherited from Britain the traditions of parliamentary democracy provides a bond of union. In the newer Commonwealth countries where the tradition has not yet had very long to take root, the Commonwealth connection helps to nurture and sustain it.

Because of the loose and informal nature of their association, the Commonwealth nations do not act in world affairs as a single body. There is, however, continuous consultation between them through various diplomatic representatives. From time to time there are also Commonwealth conferences in which the Prime Ministers or other representatives of the Commonwealth countries meet to discuss matters of policy and questions of common interest.

The North Atlantic Treaty Organization (NATO)

This organization was first established in 1949 by a group of nations in North America and Western Europe. The main object of NATO is to provide security for its members by means of co-ordinated political and military policies and by a collective defence in the event of armed attack. Thus the North Atlantic Treaty expressly states that an attack on any member of the organization will be treated as an attack on all. Although at Canada's insistence an article was included in the treaty to encourage collaboration for other than military purposes, it has so far been the military function of NATO that has predominated.

Exercise 1

Define the following terms. If you are unsure as to their meaning, consult your lesson notes or a dictionary.

1. belligerents: _____

2. caucus: _____

3. constituency: _____

4. extradition: _____

5. franchise: _____

6. Hansard: _____

7. penal institution: _____

8. precedent: _____

9. prorogued: _____

10. punitive: _____

11. statute: _____

12. the Whip: _____

Exercise 2

Indicate whether each of the following statements is True or False by circling **T** or **F** in the space provided.

- | | | |
|---|---|---|
| 1. In the Canadian parliamentary system the executive power is controlled by the monarch and the cabinet. | T | F |
| 2. The Queen is the head of Canada's government. | T | F |
| 3. Only those privy councillors who are members of the current cabinet take part in advising the Governor-General. | T | F |
| 4. The Governor-General is the leader of the political party with the largest number of seats in the House of Commons. | T | F |
| 5. The Constitution provides that measures for appropriating public funds or imposing taxes must originate in the Senate. | T | F |
| 6. The BNA Act makes no mention of the role the Cabinet is to play in our governmental system. | T | F |
| 7. Senators must retire when they reach 65 years of age. | T | F |
| 8. The Senate may initiate any bill except one which deals with the collection or spending of taxes. | T | F |
| 9. The chief characteristic of the House of Commons is its representative character. | T | F |
| 10. The House of Commons is primarily an initiator of legislation. | T | F |
| 11. A federal election can be held on any day of the week except, of course, Sunday. | T | F |
| 12. To be a candidate in an election, you must be a member of a political party. | T | F |
| 13. Members of the House of Commons are not legally required to live in the constituency which they represent. | T | F |
| 14. The House of Commons may refuse to seat a person who has been duly elected as a member. | T | F |
| 15. In each House of Parliament a Bill will have three readings. | T | F |

Exercise 3

Fill in the blank spaces in the following statements; only one term is required for each space.

1. In the Canadian governmental system the legislative power is controlled by _____.
2. The Governor-General is appointed for a period of _____ years.
3. When the Prime Minister leaves office; this act normally carries with it the resignation of all those in the _____.
4. The cabinet must consider and approve the policy underlying each piece of proposed _____.
5. The _____ must sign each Bill passed by parliament before it can become law.
6. To be appointed a senator a person must be at least _____ years old.
7. Representation in the House of Commons is based on _____ and adjustment is made every _____ years.
8. By law the term of a Parliament cannot exceed _____ years.
9. Every Bill, before it becomes law, must be passed by a _____ in each House of Parliament.
10. A formal vote of the House of Commons is called a _____.
11. _____ law governs the conduct of our citizens and government in its relations with foreign governments and their citizens.
12. Canada claims a territorial sea with a width of _____ kilometers measured from her coastline.

Exercise 4

1. What is the most distinctive feature of the federalist form of government?

2. What is the Cabinet's primary responsibility?

3. What qualities and abilities is a cabinet minister expected to possess?

4. Briefly describe 4 responsibilities of the Governor-General.

- (a)

- (b)

- (c)

- (d)

5. Why would it be unusual for a senator to be appointed to head a department of government?

6. What is one of the most important functions of the members of the Opposition in the House of Commons?

7. The federal parliament consists of what three parts?

- (a)

- (b)

- (c)

8. Briefly state the reasons why the Senate has less power and influence than the House of Commons.

9. Briefly state the reasons why a government enjoys the power of being able to appoint people to the Senate.

10. The essential functions of the House of Commons are:

(a)

(b)

(c)

11. The formal decisions made by the House of Commons are of four kinds:

(1)

(2)

(3)

(4)

12. Why is it that candidates in an election who receive less than half as many votes as the winner must forfeit their deposit?

13. What privileges do individual members of Parliament enjoy?

14. For what reasons must a session of Parliament be held at least once every year?

(a)

(b)

15. Briefly describe the difference between a government bill and a private member's bill.

16. What is the role of the Opposition in Parliament?

17. Give some examples of advantages to be gained when countries comply with international rules and cooperation.

(3) _____

[illegible]

2. Do you think that Canada should continue to recognize the British Monarch as our "Head of State" or should we declare ourselves to be completely autonomous and free of any ties to Great Britain? Explain your position.

3. Would you be in favor of a world-wide police force with the power to enforce sanctions or penalties imposed on a country by the United Nations or other world-governing body? Explain your position.

LESSON RECORD FORM

3430 Law 30

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PROVINCIAL AND MUNICIPAL GOVERNMENT

The structure of the ten provincial governments in Canada is almost identical to that of the federal government. The provinces have representative and responsible government. Their legislature, Cabinet and Prime Minister serve the same functions and play the same roles as in the national government. But the provincial and federal governments exercise different powers, and in addition the provincial government also delegates some of its authority to local or municipal councils which superintend many everyday activities of their citizens.

The Provinces

The outstanding feature of governments of the Canadian provinces is the fact that they, no less than the federal government, have been largely modelled on English law and practice. This common bond of the federal and provincial governments to the English system helps to simplify the study of the governments of the provinces. It has produced similarities in federal and provincial political institutions and practices. Moreover, the English attachment, aided by association with the federal government and other provinces, has further tended to mold provincial governments into a fairly uniform type so that in essentials they are very much alike. Though the lesson deals specifically with the provincial government of Alberta, the general principles of the working of the government can be applied to any other province.

Provincial Constitutions

The provincial constitutions like that of Canada, are derived from several sources. The British North America Act and provincial statutes furnish the legal framework; and this is added to, modified, and interpreted by custom, judicial decision, orders-in-council, rules of the legislature, etc. The provinces are given the power to amend their written constitutions, for Section 92 of the BNA Act gives to their legislatures the power to amend "notwithstanding anything in this Act, ... the constitution of the province, except as regards the office of Lieutenant-Governor."

This sweeping legislative power, whether used for amending the constitution or for enacting ordinary statutes is subject to certain restrictions, or possible restrictions:

- (1) It cannot be used to alter the distribution of power between the federation and the provinces.
- (2) It cannot, as already noted, alter the office of the Lieutenant-Governor, who is a Dominion official.
- (3) Provincial legislation under the terms of the B.N.A. Act may be disallowed by the Governor-General-in-Council within one year of its receipt by the federal government. This is a power which may be used to render inoperative and void any provincial act whatsoever and for any reason which may seem fitting to the federal government. "Contrary to sound principles of legislation," "ultra vires," "unjust," "discriminatory," are some of the reasons which have been given in the past. The use of this power is uncertain and sporadic, but it is still active.

- (4) Closely allied to the power of disallowance is federal action or inaction on provincial Bills which may be "reserved" by the Lieutenant-Governor for the consideration and approval of the Dominion Government. Any provincial Bill may be subject to this treatment, and if the Governor-General-in-Council withholds its assent, the Bill does not become a law.

The Lieutenant-Governor

The most obvious difference in the structure of the provincial government is that the Lieutenant-Governor, the chief executive officer in the province who is the provincial counterpart of the Governor-General, does not represent the Queen directly. The Lieutenant-Governor is appointed by the Governor-General, on the advice of the Prime Minister of Canada, to represent the Crown in the provincial government, in performing such duties as opening and closing the legislature and giving assent to Bills that are passed there. Nevertheless, the Lieutenant-Governor is also the representative of the federal government. The appointment is for a term of five years, but this may be extended at the discretion of the Prime Minister.

The duties of the Lieutenant-Governor are:

- (a) To act as the ceremonial head of the government, performing the opening and proroguing ceremonies of the legislature and many other official duties throughout the province.
- (b) To act as the social head of the province giving leadership in such fields of endeavour as the arts, youth movements, charities, services, etc. To entertain government officials and important visitors to Alberta.
- (c) To assent to all legislation passed by the provincial government or to reserve judgement and refer it to the Governor-General.

Since the provinces have responsible government, the Lieutenant-Governors act on the advice of ministers responsible to the legislature, in other words the Premier and Cabinet. On occasion Lieutenant-Governors have shown considerable independence, sometimes disregarding the advice of their Cabinets. Several provincial Lieutenant-Governors have dismissed their advisers or forced their resignation for alleged corruption or incompetence. These incidents provide substantial evidence to show that the Lieutenant-Governor is more than a passive instrument in the hands of the Cabinet. The normal practice, of course, is that the Lieutenant-Governors act under advice; but on occasion they have proved to be quite prepared to set their own opinion against that of their constitutional advisers.

The Premier and the Cabinet

The Cabinet dominates the government of a province in much the same way and to the same extent as the federal Cabinet dominates the government of Canada.

The Premier takes office on the invitation of the Lieutenant-Governor; the Premier chooses the Cabinet, is the leader of his party in the province, the leader of the majority in the Legislative Assembly, and the leader and outstanding figure in the Cabinet. Members of the Cabinet normally have seats in the legislature, and the Cabinet is at all times responsible to the Assembly. The Premier and Cabinet compose the Executive Council. This Council is empowered by the Legislative Assembly to administer laws passed by this Assembly.

The principal functions and duties of the Executive Council are:

- (a) To give active leadership in forming a provincial policy on all matters concerning the province.
- (b) To carry out a wide variety of executive acts, usually by means of orders-in-council.
- (c) To supervise the work of the governmental departments. Each minister is the head of a department.
- (d) To control the order of business of the legislative assembly.
- (e) To introduce all new legislation affecting public affairs. Bills introducing such legislation are called Public Bills. The Premier writes the speech from the throne in which is outlined the business of the session.

As can be seen, provincial cabinet ministers perform the three functions — legislative, executive, and judicial — as do the cabinet ministers in the federal government. Cabinet solidarity is just as important in the provincial legislature as it is in the federal Parliament. If the Premier or Cabinet introduces a Government Bill (sometimes referred to as a "measure") which is defeated in the Legislative Assembly, then the Premier and Cabinet must resign following a successful vote of non-confidence. This is the principle of responsible government working in the provincial sphere.

Cabinet Departments

The chief departments and some of their duties are outlined in the following sections. The distribution of departmental functions naturally varies with each province, although the main variations occur with a number of small matters which do not come definitely within the scope of one department more than another. It will be observed that most of the departmental activities affect the daily life of the average citizen much more closely than do those of the federal government.

1. Agriculture. This department has charge of a very wide variety of activities directly or indirectly associated with the encouragement and development of agriculture. Agricultural schools and colleges; research, and experimental farms and plots; farmers' societies; improvement of livestock, field crops, soils, dairying, etc.; marketing schemes; weed and pest control; seed cleaning and spraying demonstrations; field extension work of all kinds; conservation - these are the more important undertakings of this department.

2. **Attorney-General.** This is the legal department of the government and, as such, it watches over the work of minor courts, sheriffs, registrars, court clerks, and other legal officers, and co-operates with them. It also recommends legal appointments. It enforces the law and prosecutes offenders under all federal laws, notably the Canadian Criminal Code, and all provincial laws, such as The Highway Traffic Act and The Liquor Control Act.
3. **Education.** The name of this department clearly indicates its functions. It deals with the supervision and inspection of teaching and schools; health of school-children; curricula; normal school and summer courses; trade schools; vocational guidance; public libraries and archives; departmental publications; correspondence courses; radio and television broadcasting for educational purposes; and, indirectly, university education.
4. **Health.** This has charge of provincial hospitals, asylums, homes, sanatoria, etc.; regulation and inspection of similar private institutions; assistance to local hospitals; educational projects on dental health, maternal and child hygiene, etc.; industrial hygiene and occupational diseases; regulation and inspection of lumber, mining, and construction camps; research and testing laboratories; public health nursing; registration of nurses; sanitary engineering; psychiatric services; control of preventable diseases.
5. **Highways.** This department has charge of the construction and maintenance of highways and bridges; the ploughing of snow on the main highways; the issuing of motor vehicle and drivers' licenses, and the collection of appropriate fees.
6. **Labor.** This department endeavors to promote fair dealing in labor matters and regulate such matters as collective bargaining, the right to strike, union security, general labor practices, child labor, industrial standards, apprenticeship, hours of labor, factory conditions, etc.
7. **Lands and Forests.** This has the control of Crown lands and the general oversight of privately owned land. It buys, sells, and leases public lands; administers provincial parks and forests; maintains forest fire protective services; aids in municipal and private reforestation; conducts soil surveys, soil erosion studies, and insect pest research; and is responsible for publicity campaigns on conservation and allied problems.
8. **Mines.** This keeps all records of mineral production; conducts geological surveys; gives technical information and assistance to mining projects; formulates regulations for and inspects the operation of mines; investigates accidents and promotes safety measures and appliances; conducts examinations to determine the competence of miners and mine officials; and maintains assay offices.
9. **Municipal Affairs.** This department acts in an advisory and authorizing capacity to municipal bodies. It will approve proposed capital undertakings by a municipality; authorize the issue of municipal bonds; ensure that adequate sinking funds are set aside to pay off long-term loans; audit municipal accounts and compel the keeping of proper records; render various technical services to municipalities which cannot supply them; advise on town planning, assessment, budgeting, and all municipal problems.

10. Provincial Treasurer. This has general supervision of all expenditures and the collection of some of the revenue, although the latter will usually be derived from several departments and other sources. A very large revenue comes also from the provincial liquor board; and land taxes, and other levies such as fees and automobile licenses may be more conveniently collected by other departments and paid over to the Treasurer. The department controls and supervises provincial loans, the debt of the province, and it advises all departments on financial matters. It also performs important auditing functions for all departments, and is responsible for assembling all budgetary material and preparing the budget.
11. Public Works. This department has the supervision, care, and maintenance of all provincial buildings — legislative and departmental buildings, Government House, normal schools, agricultural colleges, reformatories, hospitals, schools for the deaf and blind, etc.

Other departments or divisions are of minor importance in some provinces or occur in some and not in others. The provincial governments have experimented with public ownership, at times on a very large scale, notably in hydro-electric power, railways, telephones, and the sale of liquor. For some of these enterprises and for many other administrative tasks provincial governments have often used boards and commissions to replace or to assist the regular departmental staff. Liquor boards, hydro-electric commissions, and public utility commissions are by far the most common of these.

Each of these Departments was brought into being by an Act which defines the duties and responsibilities of the Minister of the Department. It should be noted here that all laws when passed are assigned to a particular Department for administration. For example, all Acts concerning education are assigned to the Department of Education.

The Cabinet is essentially a flexible organization. It changes to meet the requirements of the times. New departments are created to serve new conditions and old ones no longer needed are abolished.

There is a certain uniformity in the organization of a Department. Each one is headed by a Minister who assumes the title of "The Honorable." Each minister is appointed by the Premier and remains in office, then, only as long as the government party is in power or until the Premier sees fit to replace him. In other words there is always a change of Ministry whenever a different party gets into power.

The Provincial Legislature

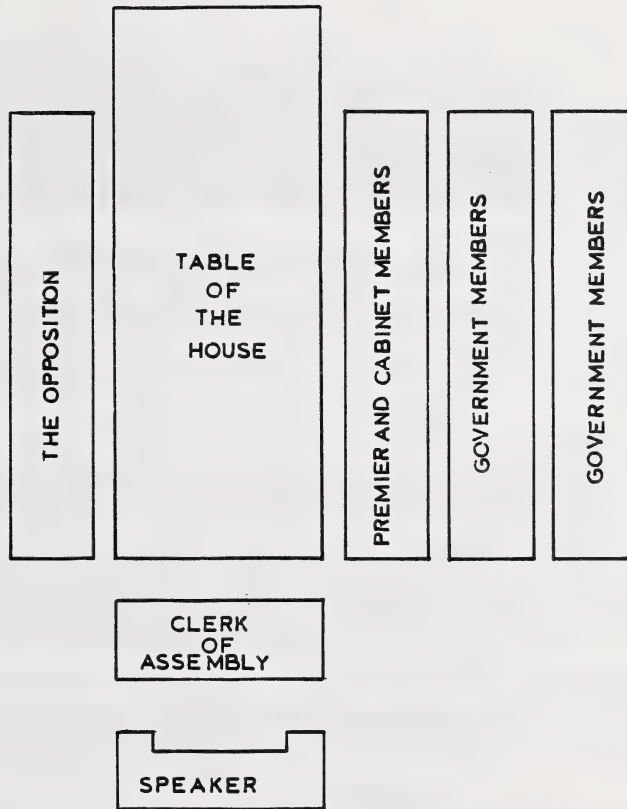
There is one major difference between the provincial and federal legislatures. The provinces have no second chamber corresponding to the Senate. Otherwise the provincial and federal legislatures are much the same. The same traditions and rules are followed, although the formalities have often been modified in the interests of efficiency. In addition, the smaller assembly permits a more informal atmosphere than does the larger House of Commons.

Our government is called a representative government because we govern ourselves by means of an elected representative whom we commonly refer to as our M.L.A. or "Member of the Legislative Assembly." We elect a representative for a period of five years only, although the legislative assembly may be dissolved before the end of the five-year term. At the end of five years, or following the dissolution, there must be another election, when the voters can either send the same member back to the legislative assembly as their representative, or, if not satisfied, can elect another representative who is prepared to carry out their wishes. For the purpose of elections the province is divided into electoral districts or constituencies with as nearly as possible the same number of voters in each division. The size of the electoral district therefore depends upon the density of the population.

Every man or woman who is a Canadian citizen, who has reached the age of 18 years and has lived in Alberta for six months preceding the date on which election proceedings begin, and on that day was ordinarily a resident in the electoral division in which he or she seeks to vote, is entitled to vote in the provincial election unless he or she is:

- (a) a judge of the Appeal Court or Court of Queen's Bench;
- (b) a person disqualified from voting under The Election Act or any Act relating to corrupt practices;
- (c) a person undergoing punishment as an inmate of a penal institution for the commission of any offence;
- (d) a person who is a patient in a mental hospital or school for the mentally incompetent.

The candidates who seek votes in a provincial election must be qualified electors of the full age of 18. They usually belong to an organized political party. Each party has its own ideas and methods of conducting the affairs of the province. These are offered to the electors as the party platform. Prior to the election, the political parties hold conventions in the electoral division at which party members choose candidates to stand for election to the Legislative Assembly. Intelligent electors are not deceived by extravagant promises made by candidates who have neither the power nor the intention of carrying them out, nor are they flattered by the back-slapping and baby-kissing that is sometimes a part of the election campaign. Voting should be a purely intellectual process in which the electors exercise their powers of judgement, and not an emotional process in which they give way to feelings.



Seating Plan of the Alberta Legislative Assembly

The Alberta Legislative Assembly consists of 83 elected representatives voted into power by the citizens of the province. The chief functions and duties of the members of this assembly are:

- (a) To speak for the people they represent on all matters that come before the Assembly.
- (b) To give or withhold their approval to legislation.
- (c) To supervise the work of the government by asking questions of the cabinet ministers and by examining financial statements, orders-in-council, departmental estimates, etc.

In the month of February of each year, the Alberta Legislative Assembly meets to hold its annual session. In the legislative chamber the Lieutenant-Governor reads the speech from the throne which has been prepared by the Executive Council. This speech summarizes the business which the government intends to lay before the Assembly during the session. Having delivered the speech the Lieutenant-Governor retires from the chamber, leaving the assembly to conduct its affairs.

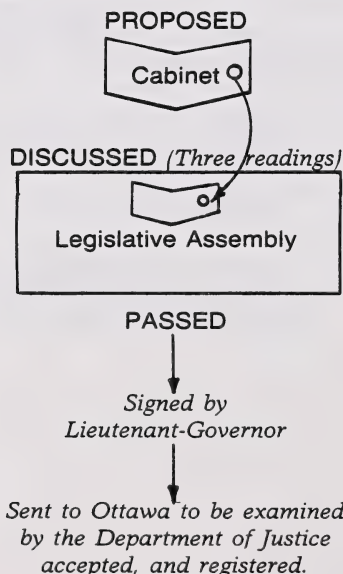
The main business of the session centers around:

1. The debate on the speech from the throne.
2. The budget speech delivered by the Provincial Treasurer, which involves the discussion of estimates for public works and services which the government intends to carry out during the year.
3. The reports from each of the departments, given by the respective ministers during either the above debate or the budget speech.
4. The introduction of Bills which must pass through three readings before they are accepted and become law. This work is usually done by the committee of the whole House. For this committee work the Speaker leaves the chair and the rules of parliamentary procedure are set aside and the Bills are discussed clause by clause.

The public may, at times while the legislature is in session, sit in the Public Gallery of the Chamber and listen to the business under discussion.

PASSAGE OF A BILL THROUGH THE LEGISLATIVE ASSEMBLY

The proposed legislation is usually introduced into the House by a Cabinet Minister



The Passage of a Bill

The Speech from the Throne, read by the Lieutenant-Governor, informs the members of the Assembly of the legislative program which the Government proposes to undertake in the weeks ahead. As the session progresses, Bills, based on the program, will be represented to the Assembly after they have been approved by the Cabinet.

The first reading of a Bill represents the initial stage of presenting a Bill to the Legislative Assembly. This reading is automatic, not only out of courtesy to the member introducing it, but also because the other members have not seen it. A Bill is therefore given a first reading in order to get it printed and into the hands of the members of the Assembly.

With the second reading of a Bill may come a full debate - a debate on the principle of the objective of the measure. On many occasions there may be no debate and no recorded vote at this time. When a motion has been made for the adoption of a Bill following its second reading, the Speaker refers to the Bill and declares the motion "carried." If a member of the Assembly should object to this procedure the Speaker will call for a voice vote - "ayes" and "nays." If the "ayes" seem to be in the majority the Speaker again states that the motion has been carried. However, a formal vote must be taken if any five members of the Assembly stand up.

If a Bill is approved at this stage it is usually sent to a standing committee. These committees are appointed by the Assembly at the beginning of each session. A standing committee may report a Bill back to the Assembly with or without changes - or on very rare occasions it may throw out a Bill.

A Bill moves next to the Committee of the Whole where there is a discussion and a vote on each of its clauses. The chairperson of this committee either gains the approval of the members to send the Bill back to the Assembly for a third reading or the Bill is dropped.

The third reading is normally a formality. In 999 cases out of 1000 there is no discussion on a Bill and no recorded vote is taken. The Bill now awaits the signature of the Lieutenant-Governor to make it law.

As in the House of Commons if a measure sponsored by the Government is defeated, and if the following motion of non-confidence in the Government is upheld, the Premier and Cabinet must resign. In addition to Government Bills, private members' Bills may also be offered for the consideration of the Assembly.

When the Lieutenant-Governor comes to the Legislative Assembly to prorogue it, the Speaker addresses the Lieutenant-Governor, "May it please Your Honor: the Legislative Assembly of the Province has at its present Sittings thereof passed several Bills to which, in the name and on behalf of the said Legislative Assembly, I respectfully request Your Honor's Assent." The Clerk Assistant then reads all the titles of the Bills passed by the Legislative Assembly. Royal assent to the measures read is announced by the Clerk of the Legislative Assembly who states, "In Her Majesty's name, the Honorable the Lieutenant-Governor doth assent to these Bills." The Clerk bows to the Lieutenant-Governor and the latter bows back. The Lieutenant-Governor, by bowing, indicates approval of the Bills.

The Bills will be signed later by the Lieutenant-Governor. One copy of each Bill will be sent to the Minister of Justice in Ottawa and one copy will be kept by the Clerk of the Legislative Assembly.

The Civil Service

Civil servants are the permanent employees who do the day-to-day work of the government. These people do not need to be elected so they provide continuity of service even when one government is voted out of office and another takes its place.

The head of the civil service in each department is the Deputy Minister. The Minister may change after elections or whenever there is a cabinet shuffle made by the Premier. The Deputy Minister, however, is appointed and continues in office so the business of the department is not unduly interrupted.

The methods of appointing civil servants have varied at different times. All are actually chosen by authority of the cabinet minister so at one time it was the custom to appoint supporters of the party in power. After each change of government "heads would roll" in the civil service, and these dismissals would disrupt the service as experienced employees were let out to be replaced by those who supported the party in power but were new to the job. This is no longer the case as civil servants are now hired because of their qualifications and not for their politics. Positions are obtained through competitions.

Civil servants do the work of the government. The Minister is the policy-maker of this department, and the Deputy Minister and civil servants carry out these policies.

The Ombudsman

If individuals feel that they have been wronged by a government agency, and after resorting to various means has still failed to solve their grievance, they may present their case to the provincial ombudsman. The ombudsman can investigate the situation and give recommendations on what should be done. The ombudsman does not have the power to enforce decisions; but can only recommend. Aside from the above mentioned role, the ombudsman also serves as a good source of advice to Alberta citizens as to the appropriate government channels to consult.

Exclusive and Shared Responsibilities of Government

You will notice that the provincial department has control of educational matters while the Department of Highways works with federal and local governments in the carrying out of its duties. The working of these two different departments illustrates the fact that some provincial agencies have full power in conducting their activities, while others share duties with local or federal government in matters relating to Lands and Forests, Agriculture and Food, Health, etc.

<p>SOME RESPONSIBILITIES SHARED BY FEDERAL, PROVINCIAL, AND MUNICIPAL GOVERNMENTS</p>
<p>HEALTH and WELFARE</p> <p>Federal--old age pensions, unemployment insurance, etc.</p> <p>Provincial--hospitalization, vaccines; small-pox, polio; tuberculosis tests; sanatoria, etc.</p> <p>Municipal--medical officer of health, quarantine regulations, water purification and filtration, sewage disposal, etc.</p>
<p>AGRICULTURE</p> <p>Federal--experimental farms, marketing boards, loans to farms, etc.</p> <p>Provincial--agricultural colleges, agricultural representatives (advisors), marketing boards, etc.</p>
<p>IMMIGRATION</p> <p>Federal--quotas on immigrants, checks suitability of immigrants, financial assistance for transportation, education.</p> <p>Provincial--accepts proportion of the national quota; selects and directs immigrants to areas where needed; promotes and supports classes in English, citizenship, and other subjects (night schools).</p>
<p>HIGHWAYS</p> <p>Federal--financial help to provinces for selected major highways.</p> <p>Provincial--major roads between municipalities.</p> <p>Municipal--local roads, bridges, and improvements.</p> <p>The three levels of government co-operate in constructing and maintaining the road systems.</p>

Local and Municipal Government

Local government in Canada comprises all government entities created by the provinces and territories to provide services that can be more effectively discharged at the local level. Broadly speaking, local government services are identified in terms of nine main functions:

- (1) protection
- (2) transportation
- (3) environmental health
- (4) public health
- (5) welfare
- (6) environmental development
- (7) recreation
- (8) community services
- (9) education

The municipalities possess only the power given to them by the provinces, and are part of the provincial governmental system. As a result, they differ from province to province. The basic unit of local government is the municipality, which may be either rural or urban. Rural municipalities in the various provinces may be counties, townships, rural or municipal districts or district municipalities. Urban municipalities are villages, towns and cities. In most Canadian provinces there must be a population of 5000 to 15,000 before a municipality may achieve the status of a city. As one would expect, in general, the larger the population in a municipality, the greater are the powers delegated to it by the province.

One of the responsibilities which all municipalities share are by-laws and their enforcement. By-laws are local laws that apply to local areas which are under the control of the local governing council. A provincial statute, the Municipal Government Act, permits local government to have this enforcement power. The scope and responsibility a municipality has in regulating the everyday affairs of a community are wide ranging. Following is a brief examination at some of these areas, created in conjunction with the Municipal Government Act.

- (a) Citizens are required to purchase licenses before they can go into business in any city. A Direct Sales License is required if sales are made other than at an established place of business.
- (b) The Provincial Clean Water Act states that no person can contaminate the quality of water in any city by depositing contaminants into the supply. Under Municipal Government Act it is an offence for any person who throws or deposits any injurious, noisome or offensive matter into the water or waterworks or commits any wilful damage or injury to the works, pipes or water or encourages it to be done.
- (c) Municipalities are entitled to enforce a number of matters from the Waste Bylaw. This includes the provision of ensuring garbage is securely packaged in a proper bag, and that garbage is not allowed to accumulate on their private property.

Property owners are also required to "prevent the growth of obnoxious weeds" on their property. Weed Inspectors may, in fact, have the weeds destroyed themselves and charge the work back to the owners when the owners neglect or refuse to comply with the law.

- (d) There are restrictions with regards to parking in back alleys. For example, alleys must be kept clear to allow free movement of traffic. (The law reserves a space of three meters, the length of the alley for traffic.)
- (e) The Animal Control Bylaw stipulates that animals are not permitted to run at large nor permitted to be in any public place if suffering from a communicable disease. The bylaw enforces owners to clean up the pet's excrement, unless it is on the owner's property.
- (f) Building permits are required for the construction or demolition of buildings. Permits, however, are not required for painting and decorating, fences, cabinet work, repairs which do not affect any electrical or mechanical work, or accessory buildings not greater than 10 square meters (or 107 square feet) if no hazard is created.
- (g) Land Use Bylaws also exist where residents could be fined for offences like parking of a recreational vehicle in the front yard, building a fence too high, or parking a dilapidated vehicle outside a building on a residential lot.
- (h) A number of bylaws exist which impose restrictions at public parks. Citizens, for example are not permitted to shoot golf balls or practise archery in public parks, regulations also prohibit camping in these parks.
- (i) Matters concerning fire protection and prevention for safeguarding life and property are covered under the Municipal Government Act which permits the council to pass bylaws.
- (j) Residents are required to keep their sidewalks clear of snow during the winter.

Violations of any of these by-laws are dealt within Alberta under the Summary Convictions Act and cases are heard in Provincial Court. Section 110 of the Municipal Government Act permits imposition of a maximum fine of \$2,500 or, where there is a breach of a continuing nature, municipalities can apply for an injunction against the violator. Many municipalities enforce these by-laws by hiring full time by-law enforcement officers who keep a watchful lookout for offences. Besides being knowledgeable about the various infractions, these officers also deal with the public in a pleasant and helpful manner which avoids confrontation and aids in compliance.

The problems of municipal government are numerous and complex. Yet it is imperative to find solutions, for the tasks of municipal administration are many, and important to our welfare. For most of us, the water we drink, the schools we attend, the sidewalks we walk on, the roads we drive on, the buses we ride on are all provided by the municipality. For some of us in the cities, even the air we breathe is monitored by municipalities which pass regulations against air pollution. Health and welfare services of a wide variety, building control and slum clearance, local court houses and jails, juvenile and family courts, civil defence, sewage, parks and playgrounds, dog tags and pedlar's licenses, libraries, electricity and hospitals are more often than not provided or controlled by the municipal authorities. This list is by no means exhaustive, but it should indicate how much of our daily life is affected by the actions or lack of action of the municipal government.

As the provinces assumed more and more responsibilities during this century, they in turn passed many of them on to the municipalities. To a large extent the provinces control the municipalities and supervise their activities through Departments of Municipal Affairs. To meet the rapidly increasing expenditures of these responsibilities, the municipalities have been forced to rely on very limited revenue, much of which comes from property taxes. This is supplemented in varying degrees by taxation of personal property, businesses and amusements.

Revenue is also derived from licenses, permits, rents, concessions, franchises, fines and surplus funds from municipal enterprises. However, increased property taxes are felt very directly and keenly by those who have to pay them. As a result, municipal voters are often reluctant to vote even for worthwhile undertakings because they can foresee an immediate increase in their taxes. Moreover, in a new and rapidly expanding municipality, roads and sewers and other facilities have to be installed before a cent has been returned in the form of taxes. This means that the municipalities have to borrow heavily. As more and more duties are laid upon them in the provinces, the municipalities are asking for increased financial support from the provincial governments. In their turn, the provinces complain that they are not receiving enough for their own needs and appeal to the federal government for assistance.

Thus to the dilemma of federal-provincial relations must be added that of federal-provincial-municipal relations. At the root of the problem lie the difficulties of municipal governments. Local government has had to assume a major part of the costly consequences of industrialization - urban growth, broadened education, thousands of motorists with their consuming demand for streets, expressways, parking facilities. Yet local government still gets a very low percentage of the total amount of taxes. Its taxing resources are largely the same as when our cities were mainly market towns. Closely related as it is to the constitutional problem of federal-provincial relations, the municipal problem will not be easy to solve.

Exercise 1

Indicate whether each of the following statements is True or False by circling T or F in the space provided.

- | | | |
|--|---|---|
| 1. The provincial governments delegate some of their authority to local and municipal councils. | T | F |
| 2. The provinces were not given the power to amend their written constitutions, but rather the federal government must do this for them. | T | F |
| 3. The Lieutenant-Governor of each province is the direct representative of the Queen. | T | F |
| 4. The Lieutenant-Governor is appointed by the Queen and can only be dismissed by her. | T | F |
| 5. All provincial laws are assigned to a particular governmental department for administration. | T | F |
| 6. Government departments may be abolished or created as is deemed necessary by the Cabinet. | T | F |
| 7. The size of an electoral district depends upon the density of the population. | T | F |
| 8. Every January the Alberta Legislative Assembly meets to hold its annual session. | T | F |
| 9. If a motion of non-confidence is upheld in the Legislative Assembly, the Premier and his cabinet must resign. | T | F |
| 10. The Deputy Minister of each department is an elected representative who must resign when the government is defeated in an election. | T | F |
| 11. The Deputy Minister of each department formulates policies to be carried out by that department. | T | F |
| 12. Violations of local by-laws are heard in Provincial Court. | T | F |

Exercise 2

Fill in the blank spaces in the following statements; only one term is required for each space.

1. The structure of the ten provincial governments in Canada is almost identical to that of the _____ government.
2. Provincial legislation under the terms of the B.N.A. Act may be disallowed by the _____ within one year.
3. The Lieutenant-Governor is appointed for a term of _____ years.
4. M.L.A.'s are elected for a maximum of _____ years.
5. The Alberta Legislative Assembly consists of _____ elected representatives.
6. _____ are the permanent employees who do the day-to-day work of the government.
7. The basic unit of local government is the _____.
8. _____ are local laws that apply to local areas which are under the control of the local governing council.
9. Local government gets a _____ percentage of the total amount of taxes raised.
10. Citizens are often reluctant to vote even for worthwhile undertakings because they can foresee an increase in their _____.

Exercise 3

1. Upon what system of law and practice have the provincial governments been modelled after?

2. From what sources are the provincial constitutions derived?

3. Briefly describe the duties of the Lieutenant-Governor.

4. Provincial cabinet ministers perform three functions:

(a) _____

(b) _____

(c) _____

5. Briefly describe the duties and responsibilities of the Attorney-General's Department.

6. Who are given the title "The Honorable" before their name?

7. What is the major difference between the provincial and federal legislatures?

8. What does the term M.L.A. stand for?

9. What qualifications are necessary to vote in a provincial election in Alberta?

10. What are the chief functions and duties of the members of the Alberta Legislative Assembly?

- (a) _____

- (b) _____

- (c) _____

11. What is the purpose of the Speech from the Throne?

12. Briefly define the role of the provincial ombudsman.

13. What types of services do local governments provide?

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____
- (g) _____
- (h) _____
- (i) _____

14. List some of the methods by which a municipal government collects revenue to help pay for the services it provides.

15. It has become apparent to most people that federal-provincial-municipal relations have been getting worse in recent years. At the root of the problem lie the difficulties of the municipal governments. What are the difficulties referred to?

16. What is meant if a piece of legislation is declared "ultra vires"?

Exercise 4

Choose **one** of the following positions: member of parliament, a M.L.A., or a member of a municipal council, and in a short essay (300-350 words) indicate:

- (a) the duties and responsibilities of the position,
- (b) the reasons you would like to have the position,
- (c) the types of problems you could be expected to face, and
- (d) the degree of influence you think you would have in determining governmental policies which would affect the general populace.

[illegible]

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END OF LESSON 3

LESSON RECORD FORM

3430 Law 30

Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

(If label is missing
or incorrect)

File Number

Time Spent on Lesson

Lesson Number

FOR SCHOOL USE ONLY

Assigned

Teacher: _____

Lesson Grading: _____

Additional Grading

E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

Lesson Recorded _____

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Apply Lesson Label Here

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Please verify that preprinted label is for
correct course and lesson.

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ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

- (1) All pages are numbered and in order, and no paper clips or staples are used.
- (2) All exercises are completed. If not, explain why.
- (3) Your work has been re-read to ensure accuracy in spelling and lesson details.
- (4) The Lesson Record Form is filled out and the correct lesson label is attached.
- (5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do not enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.

Try to mail each lesson as soon as it has been completed.

When you register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

THE RULE OF LAW

An important feature of the government of Canada is its acceptance of the principle known as the *rule or supremacy of law*. This principle exists for the protection of citizens against possible excesses of authority by government officials. It means that the government itself is controlled by the law and must operate according to its terms, that all acts of government must be based on a law and not on the whim or caprice of the officials who may happen to be in authority. A Prime Minister, or a customs inspector, or the police are thus under the same legal compulsion to obey the law as the most humble citizen.

Nor, according to proper regard for this principle, should the law give exceptionally generous discretionary powers to government officials; for if these officials exercise a free hand and a wide choice in making decisions, their powers will tend to be hard to monitor. A government department which, for example, is given the general power of issuing orders to preserve conditions of public health is under far less control than one which is told by the explicit terms of a law what conditions it can regulate and the extent and manner of that regulation. It is evident that when legal powers are granted - as they certainly must be granted to enable officials to carry out the purposes of Parliament or other legislative bodies the statement which bestows these powers should be made, whenever possible, in precise terms. Citizens will in this way have some conception of the power which is given to officials and some assurance that officials will not and cannot act in an arbitrary manner.

One great difficulty today is that governments have far more responsibility than was dreamt of fifty or one hundred years ago. Let us return to the above example of the preservation of public health. A modern government department is not content (as its predecessors were) to exercise a few simple functions concerning sanitation and quarantine. It establishes hospitals and clinics; it gives free physical examinations for the detection of such diseases as tuberculosis; it educates the people in matters of health by lectures and exhibitions; it sets up standards to ensure the purity of foods, and analyses many products in order to make certain that these standards are maintained.

These activities are far too numerous and complex to be covered in detail by ordinary laws. They must therefore be entrusted in large measure to government officials who are allowed to use their own judgment in carrying out the activities which the laws in fairly general terms impose on them. Despite this strong tendency, however, the principle of the rule of law is still fundamentally sound; and while its scope has been somewhat narrowed by modern necessities, it still remains a deterrence against the abuse of power.

Due Process of Law

The most important right guaranteed by the Charter of Rights and Freedoms is the enjoyment of due process of law. This means primarily that we have freedom from arbitrary or unwarranted arrest and the right to a fair trial. The police must always inform individuals of the reason for their arrest. The accused have the right to legal assistance and in most cases are allowed to have bail. If they cannot secure a lawyer, the court may appoint one to defend them. They must be brought to trial within a reasonable period of time.

In most cases, an accused person can elect to be tried either by judge or by a judge and jury. Prospective members of a jury may be challenged on the grounds that they are biased, for no one who is prejudiced against the accused is permitted to serve. During a trial, strict rules govern the admissibility of evidence. For example, confessions secured by intimidation are not admitted. The entire proceedings are based on the fundamental assumption that every person must be presumed innocent until proven guilty.

It is considered less serious for a guilty person to go free than for an innocent person to be unjustly punished.

Law and the Courts

In its simplest sense, law in a democracy is the set of rules and regulations which the people, through their representatives, have agreed upon to make an ordered life possible. Every law restricts and at the same time protects the freedom of the individual in some way. Speed limits restrict the rate at which everyone may drive so that all may drive in safety. If there were no limits set, irresponsible persons would be free to drive at excessive speeds to the danger of all. Business firms are prevented by law from engaging in practices harmful to the public, such as fixing prices or selling impure foods (although the law is often evaded). Such laws are made by the Parliament of Canada, the provincial legislatures or local authorities exercising a general authority granted to them by the provincial governments.

Broadly speaking, there are two kinds of law, criminal law and civil. *Criminal law* is concerned with the definition and punishment of such offences as murder, arson and theft. Although these crimes may be committed against individuals they are considered to be crimes against the community as a whole. As a result, the government assumes the responsibility for bringing the criminal to trial. It is not the responsibility of the murdered person's family to seek out the suspected criminal and prosecute him or her in court. Criminal law, which is the same throughout Canada, is the responsibility of the federal government.

Civil law is concerned with property and civil rights. Such matters as business practices and financial transactions are part of the civil law. Authority over civil law is shared by the provincial and federal governments. Although control over property and civil rights is one of the powers given to the provinces, such matters as banking are under federal jurisdiction. Thus while there is some uniformity in civil law throughout Canada, there are also differences from province to province. Quebec makes the system more complex because she has retained her own Civil Code, which has a French origin, rather than adopt the laws of Britain, which form the basis of the civil law in the other provinces. In civil cases, it is generally the responsibility of the aggrieved person to bring the case into court. One exception to this rule is the case of traffic laws. Although violations of traffic regulations come under the broad category of civil law, they are regarded as offences against the state, and those accused are prosecuted by provincial or municipal authorities.

Since the rule of law is the very foundation of free government, our courts are of tremendous importance. The law as interpreted by the courts must have the respect of all. Judges must be individuals of the highest quality, not only learned but also completely independent and impartial. Although the provincial governments were given the right to organize courts and administer justice within the provinces, the federal government was given the authority to appoint judges to the Queen's Bench and Appeal Courts. This was done to give the federal government some control over the administration of justice and also to try to ensure the best and most independent judiciary. It was felt that if the judges were elected, their decisions might be influenced by the need to win votes in the next election.

There are, however, problems involved in the appointment of judges in Canada. Since they are appointed by the Governor-General-in-Council, (by the Prime Minister and government of the day), political considerations cannot help but be a factor in the choice. To guard against the obvious danger of political influence, it was decided that judges could be removed only with the consent of both Houses of Parliament. It is unlikely that any government would openly attempt to dismiss a judge in full view of parliament and the people, other than for gross incompetence or neglect of duty. In all instances judges must retire at the age of 75.

Position of the Judiciary

The essential prerequisite for the proper exercise of the judicial function is fairness and impartiality. These qualities assume a large degree of detachment from any influence which might disturb the impartiality and objectivity which judges must try to preserve at all times. Judges must therefore be placed in a position of complete independence. They must be able to perform their duties conscientiously and without fear, and must not be worried about the possible consequences of unpopular or inconvenient decisions. The opinions of judges must be founded not on what people want but rather on the law itself. The judge's decision emerges from the application of the legal principles to the facts. The judge is thus not an agent of government who is trying to carry out a particular policy, and is emphatically not subject to instruction by the people or their representatives in the rendering of decisions.

It is this need which furnishes the justification for a division of power which will isolate the courts and cut them off from political influences which might flow from the executive and legislative branches. If the judge is to be kept honest, conscientious, energetic, and fair-minded, other inducements than political responsibility must be used and other rewards and stimuli must be made available. The stronger the judges' position is made against interference and punishment, the greater is the need for stressing intangible and moral factors to preserve their integrity.

Unusual care, for example, should be taken at the time of selection as judges to ensure that they possess both character and ability. Even a sincere desire to make good appointments is not in itself enough; for their quality will depend on the degree to which the position can be made attractive to eminent members of the legal profession. Thus the salary paid judges must be substantial, without necessarily being extravagant. They must be so placed that bribery and similar influences will have little appeal, and they must be offered enough to induce them to leave a lucrative practice for the public service. The office, moreover, must be regarded as one of great honour and dignity; the social position must be assured; the fairness and character of judges must be irreproachable. No political or social device can possibly

guarantee that a high degree of ability and integrity will always be obtained in any office, but such factors as those enumerated will make the securing of those qualities in a judge extremely probable. The fine record of the Canadian judiciary bears testimony to the accuracy of this belief.

Most Canadians are proud of their legal system; they feel that the judges are honest and try to be wise and impartial, that the laws in the main are just and administered fairly. This is important because the role of the judiciary in our system of government is especially significant since our constitution is not entirely written. A good deal of it is judge-made, in the sense that the judiciary on the bench has not got a complete code of laws to administer for every case that comes before it. Though there is a *criminal code* which covers criminal offences, there are not comparable codes for civil actions or constitutional cases. In these instances, judges have recourse to what is called English *common law*. They refer back to decisions in the nearest similar cases and interpret the dispute before them in the light of these previous decisions. Now in that process, they are really making law, and in cases affecting the constitution, this role is obviously of prime importance, because the constitution is not necessarily what is written in black and white but in effect what the judges say those words mean.

Appointment of Judges

Judges are appointed by the Lieutenant-Governors of the provinces on behalf of the provincial governments, or by the Governor-General on behalf of the federal government. Likely candidates are distinguished lawyers with years of service in the courts. In communities where there is no full-time judge, or when pressure of work demands it, experienced men and women are appointed as justices of the peace. They have the authority to issue warrants and summonses. They may also hear cases involving offences against municipal statutes. Two justices sitting together may try minor summary conviction offences and hold preliminary hearings; however, they have no power to try indictable offences. Most justices of the peace are not lawyers and many of them act in an unpaid part-time capacity.

Judges of the Court of Queen's Bench of Alberta and of the Court of Appeal are appointed by the Governor-General-in-Council (really by the federal cabinet). Justices of the Supreme Court of Canada and judges in other federal courts are appointed by the Governor-General on the advice of the federal cabinet - in effect, the advice of the Minister of Justice who normally consults the Canadian Bar Association for its opinions. At least three of the nine judges sitting on the Supreme Court of Canada must come from Quebec. Traditionally, the Chief Justice of the Supreme Court of Canada is appointed on the advice and recommendation of the Prime Minister.

Territorial Court

Under federal legislation concerning the administration of the Yukon and the Northwest Territories, one or more judges of Supreme Court status may be appointed to form a Territorial Court.

The commissioners of the territories (appointed by the federal government and responsible to the Minister of Indian Affairs and Northern Development) have authority to appoint magistrates, justices of the peace and court officials. The Attorney General of Canada supervises the commissioner in the role as attorney general of the territories.

Appeals from the Territorial Courts will be heard by justices from the Courts of Appeals of British Columbia and Alberta, sitting with judges from the territories.

The System of Courts in Canada

The Parliament of Canada is empowered by Section 101 of the B.N.A. Act from time to time to provide for the constitution, maintenance and organization of a general Court of Appeal for Canada and for the establishment of any additional courts for the better administration of the laws of Canada. The provinces maintain the courts and appoint all officials, but Queen's Bench and Appeal Court judges are selected on the advice of the federal cabinet and are paid by the federal government.

There are three tiers or levels of courts:

1. the Supreme Court of Canada;
2. the intermediate courts of appeal;
3. the courts of first instance.

The names and jurisdictions of the provincial courts differ somewhat from province to province, but in general they follow the pattern as set out here.

Supreme Court of Canada

This Court, first established in 1875 consists of a chief justice; who is called the Chief Justice of Canada, and eight *puisne* (inferior) judges. The chief justice and the puisne judges are appointed by the Governor-General-in-Council and hold office during good behavior but are removable by the Senate and the House of Commons. They cease to hold office upon attaining the age of 75 years. The Supreme Court sits at Ottawa and exercises general appellate jurisdiction throughout Canada in civil and criminal cases. The Court is also required to consider and advise upon questions referred to it by the Governor-General-in-Council and it may also advise the Senate or the House of Commons on private Bills referred to the Court under any rules or orders of the Senate or of the Commons.

The Supreme Court of Canada hears appeals from all of the provincial Courts of Appeal, and from the Federal Court of Canada. An appeal may be brought from any final judgment with leave (the consent) of the provincial Court of Appeal; if such court refuses to grant leave, the Supreme Court of Canada may grant leave to appeal. Appeals in respect to indictable (criminal) offences are regulated by the Criminal Code. As a general rule, a civil case may not be appealed to the Supreme Court of Canada unless the amount in dispute exceeds a stated figure (\$10,000) or unless special permission is granted. The judgment of the Supreme Court of Canada in all cases is final and conclusive.

Special problems are created by reason of a federal system in Canada. When power is divided between federal and provincial governments it is apparent that there must sometimes be a doubt as to whether, when it passed a particular law, the federal parliament or the provincial legislature, as the case may be, was acting within the scope of powers granted to it by the B.N.A. Act. The Supreme Court of Canada is sometimes asked to consider and advise upon such constitutional questions.

Federal Court of Canada (formerly called The Exchequer Court of Canada)

The Federal Court of Canada was established to hear cases which directly concern the Crown, that is, the Government of Canada, and cases dealing with the protection of business rights. It consists of a chief judge, who is called the president, and four associate judges. They cease to hold office upon reaching the age of 75 years. The Federal Court sits at Ottawa and also at any other place in Canada where sittings may be fixed by the Court.

The Court has two divisions called the Federal Court - Appeal Division, and the Federal Court - Trial Division. The Appeal Division may be called the Court of Appeal or Federal Court of Appeal. The Court of Appeal consists of the Chief Justice of the Federal Court of Canada and three other judges. The Trial Division consists of the Associate Chief Justice of the Federal Court of Canada and seven other judges. All judges are also members of the Trial Division even though they may not be regular members. In addition to the establishment of full-time judges, an added capacity to cope with the purely judicial work of the Court is provided by the authority to invite retired federally appointed judges to act as Deputy Judges of the Court. This authority extends also to federally appointed judges who are still in office.

While all the full-time judges must reside in or near the National Capital Region (Ottawa and surrounding district) each Division of the Court can sit at any place in Canada, and the place and time of the sittings must be arranged to suit the convenience of the litigants (parties to a dispute). In addition, there is authority in the statute for a rota (roster or list) of judges to provide for a continuity of judicial availability in any place where the volume of work, or other circumstances, makes such an arrangement expedient.

The Federal Court hears all cases where patents and copyrights are concerned. It also hears cases where the federal government is involved, such as appeals in income tax matters, citizenship cases, and claims against the federal government regarding personal property taken for public roads and buildings.

The Federal Court also acts as an Admiralty Court and hears cases relating to navigation, ships and claims for damages at sea.

An appeal from a decision of the Federal Court may be taken to the Supreme Court of Canada provided the amount involved is at least \$500. The \$500 limit does not apply in the case of patents or copyrights, or where the Supreme Court of Canada has granted special leave to appeal; nor does it apply where the validity of a federal Act of Parliament or of some provincial legislation is questioned.

Alberta Courts

Although all judges of the Court of Queen's Bench of Alberta and the Court of Appeal are appointed by the federal government, the maintenance of the provincial courts and administration in the province, the arrangements for court sittings and the collection of fines, are the responsibility of the Provincial Attorney General's Department. The word "attorney" means one legally appointed to act for another. The Attorney General is the legal officer of the state who has been empowered to act in all cases in which the province is a party. The Attorney General is the legal advisor of the Lieutenant-Governor and the heads of the government departments; that the administration of public affairs in the province is in accordance with the law; superintends all matters in connection with the administration of justice in the province and is required to advise upon the legislative Acts and proceedings of the legislative assembly and generally advise the Crown upon all matters of law. The Attorney General is also responsible for the administration of the Alberta Police Act. The policing of some cities and towns is done by the R.C.M.P. by arrangement with the federal government and the Attorney General. By agreement with the federal government in 1932, the R.C.M.P. undertook the policing of the province of Alberta.

The courts operating in the Province of Alberta are:

The Court of Appeal of Alberta

The Court of Queen's Bench of Alberta

The Surrogate Court of Alberta

The Provincial Court of Alberta (formerly known as Magistrate's Court)

- Criminal
- Family
- Youth
- Small Claims

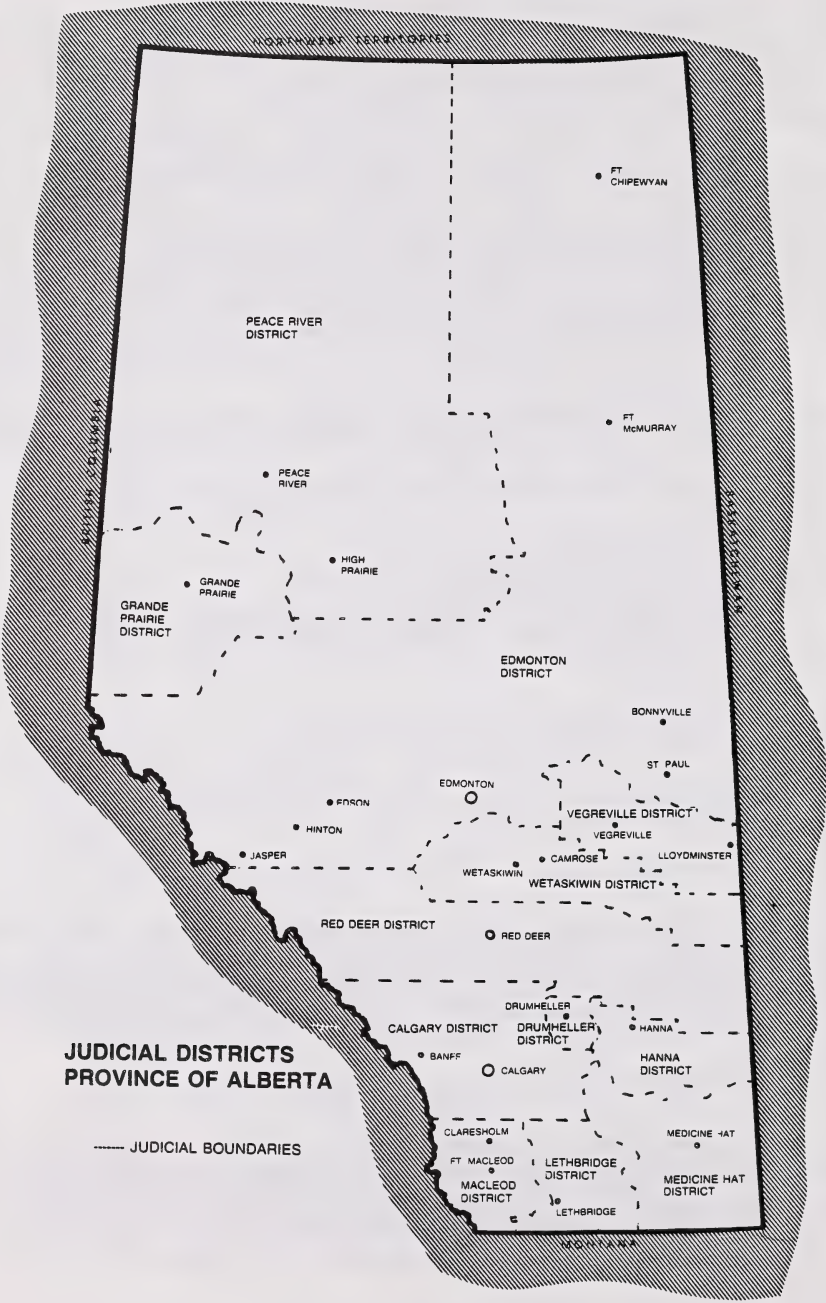
Types of Cases

1. Criminal Cases

Criminal cases involve offences against the Criminal Code of Canada. The way they are tried depends on the seriousness of the offence or on the request of the accused. All courts deal with criminal cases, but the seriousness of the offence will determine in which court the accused will be tried. This is explained in the sections describing each type of court (pages 9-12).

2. Civil Cases

Civil cases are not criminal but are different in that they involve property, financial matters, contracts and damage actions. Most civil cases are tried in the Court of the Queen's Bench of Alberta. The Surrogate Court deals with matters concerning the estates of dead people. It is a division of the Court of Queen's Bench of Alberta.



The Provincial Court of Alberta can try civil proceedings under the Small Claims Act where the limit is \$2,000. Whether a person chooses to begin an action in the Provincial Court of Alberta (for a 'small' claim) or in the higher court is that person's decision, and it depends on convenience and cost.

3. Violations against Statutes and By-Laws

Various levels of government have the power to pass laws. Federal statutes are passed by Parliament in Ottawa, provincial statutes are enacted in provincial legislatures and municipal by-laws are passed in city, town and municipal councils. Breaking provincial laws or by-laws can result in court proceedings. They are sometimes referred to as "quasi-criminal offences."

The Alberta Court of Appeal

The Court of Appeal is the highest court in the province. It is not a trial court. A minimum of three judges sit there. They may handle appeals from a person who is dissatisfied with the judgment of a trial judge. The judges are given the documents and exhibits which were presented at the trial, as well as the transcript, but no new evidence is heard (unless the judges wish). The decision by a trial judge may be reviewed and the Court of Appeal can:

1. dismiss the appeal if it is felt the trial judge was right;
2. allow the appeal if it is felt the trial judge was wrong and reverse the decision;
3. allow the appeal and order a new trial; or
4. vary the trial judge's decision.

The Court of Appeal sits only in Edmonton and Calgary. It hears appeals on points of law from the Court of Queen's Bench of Alberta and from the Provincial Court of Alberta.

The Court of Queen's Bench

The Court of Queen's Bench of Alberta hears all types of cases, both criminal and civil. It has regular sittings in the twelve centres as listed as follows:

Edmonton	Peace River	Grande Prairie
Vegreville	Red Deer	Wetaskiwin
Calgary	Lethbridge	Hanna
Drumheller	Medicine Hat	Fort Macleod

The Court of Queen's Bench of Alberta may, if the need arises, also sit in Edson, Barrhead, St. Paul, Lloydminster, Camrose, Brooks, Fort McMurray and Blairmore. The days and places for the sittings are approved by the Lieutenant-Governor. Each year the time and dates of court sittings are fixed and the chief judge assigns a judge to sit on those dates. Sometimes there are special sittings but these are to deal only with special cases. There are no regular sittings during July and August but duty judges are available during those months if their services are required.

The Surrogate Court

The Surrogate Court deals with the probate of wills, the estates of persons who have died without a will, and the guardianship of infants in the province.

When people die, the property they leave is known as their estate, and the laws of each province set out the conditions which must be fulfilled before this property is distributed. In Alberta it is the Surrogate Court which deals with such matters, and the judges are Court of Queen's Bench judges. If persons leave a will, there is usually an executor named in the will to carry out their wishes. If they die without a will (intestate) the Surrogate Court appoints someone to administer the estate according to the Intestate Succession Act.

The Provincial Court of Alberta

This court was formerly called Magistrate's Court or Police Court. It is presided over by a judge appointed by the provincial government. The Provincial Court of Alberta handles traffic violations, offences of every type except the most serious ones such as manslaughter, murder, and treason. Provincial judges have absolute jurisdiction to try, with or without the consent of the accused, certain indictable offences. They have jurisdiction to try, with the consent of the accused, other indictable offences not within the exclusive jurisdiction of the Court of Queen's Bench of Alberta. No jury trials are held in the Provincial Court of Alberta.

Every criminal case originates in the Provincial Court of Alberta. Provincial judges are entitled to exercise discretion. They must first determine whether an offence charged is one which is within the exclusive jurisdiction of the Court of Queen's Bench with the consent of the accused.

If it is an offence which is within the exclusive jurisdiction of the Court of Queen's Bench of Alberta, they hold a preliminary hearing, and if they find that there is enough evidence to show that the accused may be convicted, they commit the accused for trial before a judge in the Court of Queen's Bench of Alberta. If it is an offence which is within their jurisdiction with the consent of the accused, they offer the accused an "election" or choice, to be tried by provincial judge or in the higher court. If the accused chooses trial by provincial judge, or if it is an offence which comes within the judge's absolute jurisdiction, the judge holds a trial.

The provincial judge will try the relatively unimportant summary conviction offences, such as traffic violations, disturbing the peace, drunkenness, damage to property and petty thefts under \$200 and other offences for which the maximum punishments are generally fixed at a fine and/or six month's imprisonment. Instead of sentencing the accused, the judge may acquit or may postpone the hearing for one of many reasons. In the meantime, the judge can order the prisoner to be released on bail or on the prisoner's own unsecured undertaking to return for trial. Or the judge can order the prisoner to be remanded in custody until tried, though this is done only where it is not believed that the accused is likely to return or where remaining at liberty might constitute a danger to the public. The same practices are followed when an accused is awaiting trial in a higher court.

The procedure before the provincial judge is different if the accused is charged with an indictable offence. This is punishable by up to two years in prison, or by more than two years in a federal penitentiary. (It is for this reason that judges, when awarding two-year sentences, are always careful to specify "two years less a day" and thus avoid misunderstandings as to where the convict is to be sent). In the case of an indictable offence, it is the right of the accused to be tried before a higher court with a jury. It is the provincial judge's function to hold a preliminary hearing to decide whether there is a *prime facie* case against the accused - in other words, whether the prosecution has gathered sufficient evidence to warrant making the accused go through the ordeal of defending himself in court.

If the evidence warrants it, the judge will commit the accused for trial before a higher court; this means that the Attorney General's department will prepare an indictment. Instead of committing an accused for trial in a higher court, the provincial judge may, with the consent of the accused, try the accused and pass sentence if found guilty.

The Family Court provides counselling service for families with domestic problems, but it does not hear divorce petitions which are handled by the Court of Queen's Bench. Some of the types of cases which are heard by the Family Court include common assault where the husband assaults the wife or vice versa, custody applications between husband and wife, matters of non-support and enforcement of maintenance orders. Conciliation services attached to the court emphasize guidance. This court also hears matters which fall under the Child Welfare Act. Neglected children may be apprehended by the Department of Social Services and Community Health. In court, a decision will be made in the best interest of the child. That child may then be returned to the parents or guardian with or without supervision by the child welfare authorities. Both Youth and Family Courts have jurisdiction throughout Alberta. Judges travel on a circuit to hear cases in different areas. A Family Court appointment is in addition to a Provincial Court of Alberta appointment. Provincial Court of Alberta judges all have authority to sit as Youth Court judges.

Youth Court

Youth Courts are special courts with authority to deal with cases of juvenile delinquency. A juvenile delinquent is any juvenile who breaks any provision of the Criminal Code, or any federal or provincial statute, or any municipal by-law.

For the purposes of law, anyone between the ages of twelve and eighteen is a juvenile. A federal statute called the Young Offenders Act gives each province the authority to set up separate courts to hear charges against juvenile offenders.

Youth Courts mete out punishment when necessary but their chief purpose is to save children from further delinquency. The general public is not admitted to Youth Court trials and newspapers are not allowed to publish the names of the juvenile offenders.

Small Claims Court

A full-time judge sits in the Provincial Court of Alberta five days a week in Calgary and Edmonton to process cases under three Alberta Acts - Small Claims Act, Alberta Labor Act, and Masters and Servants Act. In the remaining centres of Alberta, the same Provincial Court of Alberta judge usually handles criminal proceedings and small claims. The Small Claims Act allows a person to sue in most civil matters up to and including \$2,000 in debt or damages. The Masters and Servants Act allows a person to sue for wages up to and including \$500 if six months has not elapsed since the end of the job. A complainant, who has been employed beyond three months and was dismissed without notice or compensation, may file for \$100 if that person feels the dismissal was unjust. Appeals from this court are heard in the Court of Queen's Bench of Alberta.

Public Inquiries

Public Inquiries under the Fatality Inquiries Act may or may not have juries. Public Inquiries are held to establish the identity of the deceased, as well as the date, time, place, circumstances, cause and manner of death. The judge or jury may make recommendations on prevention of future occurrences but findings of legal responsibility are not permitted. Many of these deaths are the result of traffic or industrial accidents. A Provincial Court of Alberta judge conducts the inquiry (formerly called an inquest) and medical examiners (previously known as coroners) or the police conduct the investigation. Medical examiners deal with inquiries into deaths which occur unnaturally or unexpectedly or which cannot be explained.

Court Actions

The person who brings a suit is called the plaintiff and the other party is the defendant; this case would be listed on the docket or court agenda, as "Jones V. Smith". If this was a criminal case it would be listed as R. V. Smith. (R. stands for Regina, Latin for "Queen"; in this case Elizabeth II, Queen of Canada, in whose name all state prosecutions are launched and in whose name all justice is dispensed).

Adjournment

Neither the defense nor the prosecution is forced to bring its case to trial before it is ready to do so. With the duty to ensure the fairest possible trial, judges will normally accept a variety of good reasons for postponing a case. By this procedure, termed an adjournment, a case may be kept out of courts for weeks and even months. However, an adjournment cannot be sought by either the Crown or the defense simply to delay the process of law.

Judges may grant adjournments because more time is needed to prepare arguments or because witnesses may be unavailable until a later date.

Judges may postpone sentencing until they have received reports from probation officers. These can assist the judge in determining what the most appropriate sentence might be. For instance, a study into the offenders's background and present family situation might influence the judge to release the prisoner on probation rather than send the accused to jail. In a difficult case, especially where fine points of law have been argued by counsel, the judge may simply require extra time to consult legal authorities or just to think the matter over.

Long, exhaustive and expensive delays in the judgment of an action are caused also by the sheer volume of cases before the courts. The longest delays occur in the higher courts, particularly in the provincial Appeal Courts and the Supreme Court of Canada. Even at the best of times, a trial before a high court can be delayed because these courts sit for only limited periods during the year.

Long delays can also have an effect on the cases themselves. The defense may sometimes succeed in having a case dropped for want of prosecution (for example, if a key witness dies or moves out of the country.)

Further delay in the final settlement of a case can arise from the right of appeal which a convicted person may exercise; even though justice appeared to have been done in the lower court. Some people might argue that the law is not fair in this instance: individuals with enough money to pay for a string of appeals can extend their freedom over a long period while further argument is heard; yet another individual, in the same circumstances but without the same resources, might have no choice but to accept the verdict given by a lower court and go to jail.

The Jury

A jury is a panel of citizens called to determine a case and render a verdict in a court of law. However, given a choice, the tendency seems to be for a defendant to choose trial by judge alone when permitted. This reflects the present belief that the Court (i.e. judge) is likely to be more liberal than the general citizenry.

Certain individuals are exempt from jury duty: these include members of federal and provincial governments, judges, police, the clergy, lawyers, doctors, members of the press, the Canadian Armed Forces and those employed in some essential services. Jurors are drawn from either tax-assessment roles or voter's lists and are paid a fee for each day they serve the court; in addition, they are sometimes granted traveling expenses. Both prosecution and defense have the right to challenge jurors for partiality or to complain that the jury was not properly and fairly selected. Anyone who is seen to be prejudiced for or against the accused will not be allowed to serve.

In Alberta, a jury in criminal proceedings is composed of 12 members, while in civil proceedings a jury is composed of 6 members.

Law Enforcement Agencies

It is often thought that the police represent the law. It would be more accurate to say that they represent the force behind it. Our enjoyment of the rule of law depends partly on the nature and calibre of our police forces. In our Canadian democracy the police are servants of the people. They are charged with the enforcement of those laws and regulations which the people, through their elected representatives, deem necessary for the maintenance of order and security within the country. They are not, as in totalitarian countries, the armed tool by means of which the ruling authorities impose their will on the people. In a democracy the police act on the people's behalf.

The police forces of Canada are organized in three groups: (1) the federal force, which is the Royal Canadian Mounted Police; (2) provincial police forces - Ontario and Quebec have their own provincial police forces but all other provinces engage the services of the Royal Canadian Mounted Police to perform parallel functions within their borders; and (3) municipal police forces - most urban centres of reasonable size maintain their own police forces or engage the services of the provincial police, under contract, to attend to police matters. In addition, the Canadian National Railways, the Canadian Pacific Railway Company and the National Harbours Board have their own police forces.

The Royal Canadian Mounted Police

The Royal Canadian Mounted Police is a civil force maintained by the federal government. It was established in 1873 as the North-West Mounted Police for service in what was then the North-West Territories and, in recognition of its services, was granted the use of the prefix "Royal" by King Edward VII in 1904. Its sphere of operations was expanded in 1918 to include all of Canada west of Thunder Bay and in 1920 it absorbed the Dominion Police, its headquarters was transferred from Regina to Ottawa and its title was changed to Royal Canadian Mounted Police.

The force now operates under authority of the Royal Canadian Mounted Police Act of 1970. It is responsible to the Solicitor General of Canada and is controlled and managed by a Commissioner who holds the rank and status of a Deputy Minister and is empowered under the Act to appoint members to be peace officers in all provinces and territories of Canada.

The administration of justice within the provinces, including the enforcement of the Criminal Code of Canada, is part of the power and duty delegated to the provincial governments. All provinces, except Ontario and Quebec, have entered into contracts with the Royal Canadian Mounted Police to enforce criminal and provincial laws, under the direction of the respective Attorneys-General. In these eight provinces, the force is also under agreement to provide police services to more than 160 municipalities. The force maintains liaison officers in London, Paris, Hong Kong and Washington, and represents Canada in the International Criminal Police Organization, which has its headquarters in Paris.

The 12 Operational Divisions, alphabetically designed, make up the strength of the force across Canada; they comprise 41 subdivisions which include 689 detachments. "Headquarters" Division, as well as the Office of the Commissioner, is located at Ottawa. Divisional Headquarters, for the most part, are located in the provincial capitals, except for "C" Division which is in Montreal and "A" and "G" Divisions which are in Ottawa. The "Air" Division, also with headquarters in Ottawa, supports the Operational Divisions by providing transportation and related services. The "N" Division in Ottawa and "Depot" Division in Regina are Training Divisions.

A teletype system links the widespread divisional headquarters with the administrative centre at Ottawa and a network of fixed and mobile radio units operates within the provinces. The focal point of the criminal investigation work of the force is the Directorate of Laboratories and Identification; its services, together with those of divisional and subdivisional units and of five Crime Detection Laboratories, are available to police forces throughout Canada.

The Canadian Police Information Centre at R.C.M.P. Headquarters, a duplexed computer system, is staffed and operated by the force. Law enforcement agencies throughout Canada have access via a series of remote terminals to information on stolen vehicles, licenses, and wanted persons.

The R.C.M.P. operates the Canadian Police College at which force members and selected representatives of other Canadian and foreign police forces may study the latest advances in the fields of crime prevention and detection.

Provincial Police Forces

At the provincial level, only the provinces of Ontario and Quebec have a distinct provincial police force responsible for law enforcement on lands belonging to the Crown in the right of the province as well as other jurisdictions within their own powers and not otherwise assigned to a municipal force or the Royal Canadian Mounted Police. These two provincial police forces are governed by provincial legislation.

Municipal Police Forces

Municipal police forces are governed by provincial legislation and the requirements vary from province to province. In Alberta those areas that do not have a municipal police force contract out law enforcement duties to the R.C.M.P. Some small municipalities may have a so-called police force of their own, but these peace officers do not have power of arrest and only have authority to enforce municipal by-laws. In order for these municipalities to have the full protection of the law and be able to effect arrests for offences committed under the Criminal Code or other statutes (either federal or provincial), a said municipality must contract with the R.C.M.P.

Training

All of the various provincial Police Acts require that a candidate, to be eligible to join a police force, must be free of a criminal record (felony or indictable offence).

The training of police constables start during their probationary period with "in service" training within the police force itself. If candidates are found to have the necessary qualifications and are able to absorb the instruction given, they may then be taken on as members of the force. These initial phases are very similar for all forces, whether the R.C.M.P., provincial or municipal.

Upon becoming members of a force, constables continue to perfect themselves by further "in service" training, and many opportunities are offered at the various Police Colleges across the country.

Further training, sometimes to a very senior academic level, can be carried on as a member of a force. University degrees among serving personnel are becoming more and more frequent.

Police Questioning and Arrest

This is an appropriate point at which to discuss your rights and recommended attitudes when you are stopped by the police for identification or questioning. If you feel blameless, you are strongly urged to co-operate with them to the fullest extent. They have a difficult task to perform and they must inconvenience the innocent public with questions occasionally, in order to apprehend those who do commit offences against society. The sooner you answer their questions satisfactorily, the better they can do their job with one less suspect to worry about. The citizen who belittles and abuses the police is only inviting trouble.

Individuals must justify their presence or activities when questioned if a police officer requires them to do so. Even if they are not arrested, automobile drivers must produce their driver's license when asked to do so by a peace officer. You are under no obligation to answer any questions unless you have been lawfully arrested. If you exhibit a grudging attitude however, you may give the police reasonable grounds for suspecting you of crime, which thereupon entitles them to arrest you without a warrant. After arrest, you must identify yourself, but need answer no further questions if you do not wish to do so. After being arrested, you must submit to your person being searched. If you are not under arrest, an officer must have reasonable, and subsequently provable, grounds for searching you, such as suspecting you of carrying an offensive weapon.

Your premises may not be searched against your wishes without a search warrant. This protection does not extend to your car, boat, or other vehicle in which you are suspected on reasonable grounds of keeping drugs, narcotics, firearms, or liquor unlawfully. Any person found in a vehicle under these circumstances must also submit to a personal search.

Police officers may arrest without a warrant:

- (a) anyone who has committed an indictable offence, or anyone whom they reasonably believe to have committed, or is about to commit, such an offence, or
- (b) anyone whom they actually find committing any criminal offence.

Food, health, and liquor inspectors also possess powers of arrest.

Individuals may exercise their right of "citizen's arrest" without a warrant against:

- (a) a person whom they actually find committing an indictable offence;
- (b) a person whom they find committing any summary conviction offence on their property or on that of their employer, eg. shop-lifting; or
- (c) an escaping criminal who is being pursued by the proper authorities.

Anyone who has been arrested by a private citizen must be delivered to a peace officer with all possible speed.

Once you have been taken into custody by the police, you must accompany the arresting officer to the police station peaceably; otherwise you might be guilty of obstructing the police in the execution of their duty. You should immediately get in touch with your lawyer, if you have one, or get your family or a friend to engage one. The police are usually quite cooperative in helping you effect such contact.

At the time of arrest, the police must inform the accused that they are being arrested and, if the accused asks, why they are being arrested. Suspects must also be told that they are under no compulsion to make a statement but that, if they do, it may be used as evidence. While this may seem to favor lawbreakers, it serves to make doubly sure that persons do not incriminate themselves by hasty or ill-considered remarks.

Apart from having the power to arrest, the police may ask a justice of the peace to issue a summons, ordering a specifically named person to appear in court. The police themselves may issue an appearance notice which they will ask the suspect to sign; this commits the suspect to appear in court and sidesteps the mechanics of a formal arrest, thus saving the taxpayer money and the courts valuable time. The officer who has issued an appearance notice must provide the courts with a statement, known as an information, before the date named on the appearance notice for the suspect to come to court. In the information, the police must give an outline of the alleged offence. If a judge in reviewing the information does not think that the offence has actually been committed, the judge may cancel the appearance, releasing the suspect from the commitment in the appearance notice.

Cases of police brutality and abuse of their powers are frequently reported in the news media. This is necessary to keep citizens informed and aware of the quality of work police departments are doing. But it is also essential for all Canadians to realize and appreciate the excellent job being performed by most police officers. Some officers do take advantage of their position, but they are only a small minority. The vast majority obey department regulations and the law, and do their best to perform a difficult and demanding job.

The police are sometimes accused of using threats or violence to obtain confessions from suspected criminals. Actually, officers usually warn people they have arrested that anything they say, or sign, in the presence of the police can be used against them in a court of law, and that they have the right to remain silent. If it is proven that force members used threats or violence to obtain a confession or a statement from the accused, the judge ignores the evidence because it was obtained under duress. If this occurs, criminal and civil actions can be taken by the accused against the police officer involved. However, if a suspect accuses police of using force and/or threats to obtain a statement, but cannot prove these allegations, the judge generally believes the testimony of the police, since the accused has the most to gain by lying.

Assisting the Police

The citizen has a duty to obey the law and, in one of its many clauses, the law demands that you must come to the aid of the police (also to a properly appointed fire ranger) when directly requested to do so. Section 118 of the Criminal Code provides for up to two years imprisonment for anyone who omits, without reasonable excuse, to assist officers in the execution of their duty in arresting a person or in preserving the peace, after having reasonable notice of being required to do so. This is a reminder that the police act as our agents; in effect, we have hired them to enforce the laws that we have collectively made. If you are called upon to assist a peace officer and are injured while performing that duty, you will be compensated by the government of the province where the incident occurred.

Diplomatic Immunity

Canadian police are not permitted under any circumstances to search foreign embassies and consulates, regardless of how many search warrants they may have. Similarly, Canadian embassies abroad are exempt from invasion by police or other security forces of the foreign country. By international convention - under the doctrine of extraterritoriality - these foreign embassies in Canada are considered to be foreign soil and Canadian law cannot be enforced there. These privileges do not extend to foreign commercial enterprises of any kind.

Government foreign-service staff are protected from police prosecution by the wide privileges of diplomatic immunity. It is the usual practice when diplomats have serious problems with the law, that they are ordered by the government in question to leave the country; they can be asked to leave even if they are only suspected of committing an offense (such as spying). Such persons are declared to be "persona non grata," meaning to say that they are not welcome.

Extradition Treaties

Through treaties the Canadian government has negotiated with many foreign nations, suspected criminals may be sent back to face trial in Canada. By the same agreement Canadian authorities will normally return criminals and suspects to the countries where they have broken, or allegedly broken, the law. This international delivery service is known as extradition.

An extradition treaty will list all the offenses for which a person may be returned to Canada and, similarly, from Canada to another country. Generally, political offenses are excluded and this can lead to international tensions. For example, Canada has refused to return to the United States offenders against that country's Universal Military Training and Service Act ("draft dodgers"). Canada seems to feel that the unwillingness of these young men to obey their country's law is not covered by the extradition treaty.

Before being extradited, individuals are granted a hearing before our courts. The country that wants them back must then give its reasons for requesting extradition and the fugitives may present arguments as to why they should be allowed to stay in Canada.

Private Security

Since World War II there has been a large growth of uniformed private security forces operated by nongovernmental organizations that sell a protection service to companies and individuals. Many large corporations, and even some government departments and agencies, hire these forces to guard factories and offices with specially trained private security officers.

These guards make citizens' arrests and carry out the lawful instructions of their employers; but they do not have the powers of municipal, provincial or federal police. Like the average citizen who has made a citizen's arrest, they must hand over their prisoner to the regular police force as soon as possible.

Worldwide Interpol

The major police forces of the world (including Canada's) combine their crime-fighting activities and expertise in the form of the International Crime Police Organization - better known as Interpol. Centered in Paris, Interpol keeps watch on the international activities and travel of known criminals. If a criminal leaves a country that is a member of this international police force, the Interpol communications network alerts police in other countries who will then be on the watch. It has had great success in breaking up international rings in counterfeiting, art and jewelry theft, smuggling and narcotics.

Freedom on Bail

Bail is a promise suspects must provide as assurance that they will appear in court on the date their case is scheduled to be heard. It may require the payment of money, the deposit of a property bond or simply a personal pledge. Having given this assurance, suspects are allowed to leave the police station on their own recognizance. Individuals may also be freed on an assurance in the form of some pledge by a friend or relative.

Bail can be seen as a method by which you can be released from custody after you have been arrested and charged. In most minor offences however, bail won't be an issue, you will simply receive a summons to appear in court on a specified date. Even in many serious cases, bail may not be required unless the police feel it is needed. Formerly, the onus was on the accused to prove they deserved bail; now they will only be refused bail if the prosecution can show that they do not merit it. Arrangements for bail of up to \$500 may be made by the sergeant at the police station. Should the case call for a higher bail figure, a justice of the peace will be called in to decide the type and amount of bail required. Bail figures are determined on the basis of the offense and the record or background of the alleged offender.

If the police feel that a suspect should be kept in custody, the Crown must be able to convince the justice of the peace at a bail hearing that it has reasonable and probable grounds to believe that the accused might flee, is a threat to society, or may interfere with the administration of justice (perhaps by approaching or threatening witnesses). The bail hearing must be held within 24 hours after the arrest, unless there are special circumstances. However, the hearing date may be adjourned for three days by the court - this often happens on weekends.

If a person granted bail does not show up in court on the appointed day, a warrant is immediately issued for their arrest, and the bail (if in money or property) is automatically forfeited to the Crown. Therefore, it is wise to be sure that anyone you provide bail for is a trustworthy and responsible individual.

Acquittal

When a court finds the accused not guilty of a crime, the suspect is acquitted. The acquittal, applying only to criminal trials, automatically follows when the Crown fails to prove the charges against the accused. It is the legal and formal certification that the individuals are not guilty of the charge for which they were brought before the court. It is worth noting that the court does not issue any statement that persons are innocent, but rather that they are not guilty. The acquittal carries the authority of the state for their immediate release from custody and from any further obligation to the court. (In civil actions, if the plaintiff fails to win the case against the defendant, the case will be dismissed by the court.)

Although acquitted of the charges, individuals might still suffer indirectly as the publicity surrounding a trial can be damaging to their personal or business reputations. For example, public opinion may consider that a subject was found not guilty only because of a technicality in the law. This stigma factor is taken into consideration by the judge in the preliminary hearing when deciding whether to commit a person to stand trial.

A person can be acquitted on one charge but then immediately rearrested and charged with a second but different offence related to the same unlawful incident. It is important to remember though, that a person who is acquitted on a murder charge cannot be later charged with, for example, manslaughter even if evidence of their guilt is found. Their lawyer would merely plead *autrefois acquit* (formerly acquitted) and would most likely win.

Receiving an acquittal does not give individuals any right to sue the Crown for damages, nor does it relieve the accused of the costs of their defense. If they had been convicted in error (perhaps on false evidence), imprisoned, then acquitted and released, they might receive a modest sum of money from the Crown in apology and compensation for inconvenience and suffering; however, there is no law which says they must be compensated.

Probation

If a judge is of the opinion that convicted persons can rehabilitate or reform themselves, the judge may place them on probation. Instead of going to jail for a term offenders can retain their freedom if they agree to abide by certain rules for a specified length of time. The rules are laid down in what is known as a probation order. This may state that the individual concerned must not stay out at night after a specified time, nor drink alcoholic beverages, nor leave the area of the court's jurisdiction without permission of a probation officer. Offenders may be ordered to maintain their wife and children, to seek employment, to repay anything they damaged, as well as to comply with any other conditions for their good conduct that the judge may feel are required for rehabilitation purposes.

A major condition of freedom on probation is that the individual not break any other provincial or federal laws during the probation period. If convicted of another offense during that period, the individual may face a term of imprisonment for the original offense, as well as for the new one. Under the Criminal Code, anyone breaking a condition of probation is guilty of a separate offense which carries a penalty of up to six month's imprisonment.

Suspended Sentence

After persons have been found guilty and awaiting sentencing, the judge may feel that their case is too serious for probation, and yet a prison term could well be harmful to those convicted and their family. For example, the judge may feel that a first offender who has been holding down a decent job and supporting a family should not go to jail because it would impose undue hardship on his dependents and perhaps harm the person's chances for employment in the future. As a result of these factors, the judge decides that a suspended sentence is in order. This means that the guilty party is given a prison term but the sentence is not put into effect as long as the individual behaves. If he abuses the sympathy of the court during the period of the suspended sentence, he will automatically have to serve any prison term given in the sentence, plus any extra time given for his second offense. Along with the suspended sentence, the offender may be given a probation order and be made to pay a fine.

Under the changes made in the Criminal Code in 1972, someone who pleads guilty, or is found guilty, may be conditionally or absolutely discharged at the judge's discretion without being given a criminal record or penalty. The judge may, however, impose conditions on the discharge or place the guilty party on probation.

The Local Jail

Many cities and the larger county towns maintain a local or mini-jail where offenders can be held temporarily. Most offenders are held for no more than 24 hours, usually only until bail arrangements can be made, or until their case comes up in court. Serving a sentence in a local jail is uncommon today because the facilities do not permit the kind of constructive and rehabilitative detention desirable. However, in an isolated region, the court may not think it worthwhile to send a convicted person perhaps several hundred miles to the nearest provincial jail or other institution to serve only a short term. A drawback of this local jail is that an arrested youth, or minor offender, may be lodged temporarily with a hardened and dangerous criminal.

The Reformatory

All the provinces operate reformatories and training schools for offenders serving sentences of up to two year's duration. Adult offenders who should benefit from instructional programs and counselling are often sent to a reformatory, while the training school is generally reserved for more youthful offenders with similar needs. There is a strong emphasis on rehabilitation, and security is kept to a minimum. Not trying to escape from a reformatory is often regarded as the first indication of a lawbreaker's rehabilitation.

The Provincial Jail

In the middle ground between the reformatories on the one hand, and the federal penitentiaries on the other, stand the provincial jails which receive those sentenced by the courts to terms of less than two years. As a rule, persons sent to these provincial institutions have had more than one conviction, but have not been sentenced to serve a full two-year term. Security and the general regime in the provincial jails are more strict than at the reformatory level and there may be less emphasis on rehabilitation.

The Penitentiary

The Canadian Penitentiary Service, under the control of the Solicitor-General, maintains and operates 35 penal institutions across Canada. In these centers, 75 per cent of them recidivists (having served time earlier in some municipal, provincial or federal institution), serve terms ranging from two years to life imprisonment. The federal prison system consists of seven maximum-security, nine medium-security, 12 minimum security and eight specialized institutions. Some of the medium- and minimum- security institutions offer their inmates vocational training; some are specifically designed to deal with young criminals and the emphasis is on rehabilitation.

Over one-third of the total penitentiary population is located at the maximum-security institutions. Many of these inmates are considered unlikely to respond to progressive methods; others are considered, because of their criminal records, to be dangers to society. When newly sentenced convicts enter one of these prisons, they are examined by doctors - including psychologists and psychiatrists - and interviewed by social workers. Young and first offenders are separated from repeaters; across Canada generally, about half of all serious crime is committed by individuals who

have previously served one or more terms of imprisonment. Those considered suitable for training in a trade or in farming are normally transferred at once to a medium security institution.

The minimum-security facilities include correctional camps and farming annexes to other institutions, and there are also specialized units for hostile inmates, elderly prisoners, as well as for drug addicts. The policy of the service is officially described as being directed primarily at assisting inmates to prepare themselves to take up a proper place in society on their release.

The National Parole System

Parole is a means by which inmates in any correctional institution in Canada, if they give definite indication of their intention to reform, can be released to finish their sentence in the community. The purpose of parole is the protection of society through the rehabilitation of inmates. The true purpose of corrections should be the reformation of the offender and not merely vengeance or retribution. Nevertheless, the National Parole Board is as much concerned with the protection of society as with the reformation of the offender and supervision is as much a part of the parole system as is guidance. The Board selects those inmates who show sincere intention to reform and assists them in doing so by granting parole.

Inmates are then allowed to serve the remainder of their sentence in society, but under supervision, subject to certain restrictions and conditions. The Board is not a reviewing authority and is not concerned with the propriety of the conviction or the length of the sentence; this is the function of the court. Nor is parole granted for clemency or mercy.

A prisoner serving a sentence of less than two years is eligible for parole after one-third of the time has passed. If serving more than a two year term, the prisoner is eligible after one-third of the sentence is served or after four years, whichever is less; however, the prisoner must serve at least nine months of a sentence that is more than two years. When the offender is serving an ordinary life sentence, parole may be granted after ten years. However, if given life imprisonment as the minimum punishment for the crime, parole cannot be granted until 25 years have been served and the approval of the federal cabinet has been obtained. The Parole Board also grants "day paroles" so that prisoners can leave jail during the day to work or attend school, and they return to their cells at night. Further concessions may be granted at Christmas, and temporary absences may be allowed in exceptional circumstances.

Unless inmates advise the Board in writing that they do not want parole, the Board will review their case every two years, whether they apply or not, until they are either granted parole or their sentence is served. However, once eligible for parole, inmates may apply at any time. Inmates in provincial institutions must either apply or have someone apply on their behalf.

The decision of the Board about any one inmate is based on reports it receives from the police, from the trial judge and from various people at the institution. Reports are also obtained, when available, from a psychologist or a psychiatrist and, if necessary, a community investigation is conducted to secure as much information as possible about family background, work record and position in the community. From these reports, an assessment is made to determine whether or not the prisoner is likely to lead a law-abiding life.

The following social factors concerning eligibility are taken into consideration by the Parole Board before making a decision:

- (a) The nature and gravity of the offence(s) committed by the individual.
- (b) Past behaviour - good or bad.
- (c) Total personality of the inmate.
- (d) The possibility that on release, the parolee would or would not return to crime.
- (e) The efforts made by the inmate during incarceration to improve through better habits, education and vocational training.
- (f) Whether there is anyone in the community who would help the inmate on parole.
- (g) The inmate's plans and whether they will aid in the rehabilitation process.
- (h) What employment the inmate has arranged, or may be able to arrange. Steady employment must be maintained if at all possible as one of the most important factors in rehabilitation.

Parole is strictly selective and is granted to about one-third of the applicants. It does not mean they are paroled automatically, but only if it is deserved.

A person on parole is under the care of a supervisor in one of the Board's district offices, an after-care agency worker, or a probation officer. If the individual violates the conditions of parole or commits a further offence or misbehaves in any manner, the Board may suspend or revoke the parole and return the prisoner to the institution to serve the part of the sentence that was outstanding at the time parole was granted. If a parolee commits an indictable offence, parole is automatically forfeited and the parolee is returned to the institution to serve the unexpired balance of the sentence plus any new term to which he or she is sentenced for the commission of the new offence. The district representative may also issue a Warrant of Suspension and have a parolee placed in custody if it is necessary to prevent a breach of any term or condition of the parole. Officers of the Parole Board are thus able to exercise effective and adequate control over all parolees in their respective areas.

Temporary Absence Programs

The newest experiment in prison reform is the Temporary Absence Program, which is designed to help carefully selected inmates fit back into society and become law-abiding and useful citizens. These programs differ from prison to prison, but they are all based on trust. The prisoner is permitted to go into the community for varying periods of time and is trusted by prison officials to obey the law and to return to the prison at specified times. Some prisoners are being released during the day to attend high school and college courses, to take vocational training and, in some cases, to hold jobs. Few people who come into contact with these inmates during the day realize that they are serving time in a penal institution. Furthermore, in several prisons a pass system is being used to enable certain prisoners to leave the jail to visit their families on weekends or holidays. The Criminal Code has also been amended to provide for what is called an intermittent sentence. This type of punishment permits prisoners to live with their families during the week and to hold a steady job, but the sentence is served on weekends.

The Queen's Pardon

Although any majority decision of the Supreme Court of Canada is final for all intents and purposes, there is still one ultimate appeal against the judgements of the courts. This takes the form of the Queen's pardon. All Canadians are subjects of the Queen of Canada, and therefore have the right of appeal to Her Majesty, requesting that she exercise her power of clemency, or mercy. However, this power of royal favor exists more in theory than in fact. For the Queen acts only through her representative to the elected government, the Governor-General, and he or she acts only with the advice of the federal cabinet. In practice, therefore, the power of Queen's pardon is exercised by the federal Minister of Justice. Queen's pardons, and requests for them are rare.

The Legal Profession

Lawyers play an important role in the control of crime and in the administration of justice. It is their duty to defend you if you have been charged with an offense, and to obtain for you the fullest protection the law allows. It is their responsibility to see that you are not convicted unless you are proven guilty beyond all reasonable doubt. And, if you are found guilty, it is their duty to see that the penalty imposed is as light as possible, and, obviously, no heavier than that set by law. In your defense, they must raise every issue, advance every argument and ask every question which will help your case. There will always be some dishonest lawyers and some bad judges, but these are relatively few in Canada. Quite apart from the quality of person attracted to the law, the provincial law societies, the Canadian Bar Association, as well as the provincial and federal departments of justice, all combine to oversee the work of the profession.

The academic requirements to become a lawyer in Canada are quite stringent. Most law schools require the candidate to possess an undergraduate degree, such as a B.A. or B.Sc. Students must then spend another three years at law school. Upon graduation from such a school, the student will be awarded the bachelor of laws, the first degree in law (Legum = laws; the B originally stood for Baccalawrens). L.L.M. represents master of laws, requiring a further year's study at the post graduate level. A Master's degree is a necessity for anyone wishing to teach law at university. D. Jur. is a further distinction meaning doctor of laws (Jur. for jurisprudence).

The "Bar" was originally the wooden rail at which prisoners stood when they were being charged and sentenced. Since the sixteenth century, it has come to mean "court." To practice law in Canada, you must be admitted to the Bar of the province where you intend to work. Each provincial Bar association has different rules for admission, but they all require that law graduates complete an apprenticeship period of "articling," this means that following graduation they must work in an established law office getting some practical experience to balance and enrich their academic knowledge. Upon successful completion of this additional training, candidates are then called to the provincial Bar as qualified lawyers, entitled to practice law in that province and in the courts of federal jurisdiction as well.

Each province has a law society, incorporated by the legislature, whose responsibility it is to set the standards in the profession for admission, training, practice and discipline. Anyone wanting to practice law in a province must join the association in that province, and must comply with its rules and regulations. The regulations cover many aspects, such as how lawyers must keep their account books, how they must set up a special fund to hold money belonging to their clients, and if they may collect interest on that fund. Detailed rules govern the lawyers conduct with their clients and certain practices must be followed on pain of penalty which can be suspension or expulsion from the Bar. Disbarred lawyers are not allowed to practice law until either their period of suspension has expired or they are reinstated.

Some law societies in Canada, Alberta included, allow their members to advertise, but the type of advertising is strictly regulated. When they are setting up in practice, lawyers may place a simple notice in the local newspaper announcing their intention to practice and giving their office address. They are not allowed to include a photograph of themselves in the announcement. Therefore, if you do need a lawyer and you do not personally know of one, you could seek advice from your doctor, bank manager, or from anyone you know and trust who is in business. An accountant is usually in touch with local lawyers. You can always consult the classified telephone directory under Lawyers, beginning with the one whose office is nearest your home. The Provincial law society will provide you with a list of its members in your town and district.

If any individual, who is not an active member of the Law Society, practises law in any way or represents him or herself as a lawyer entitled to practise law in Alberta, that individual can be penalized under the Legal Profession Act. The penalties range from a fine for the first and second offences, to a term of imprisonment of up to six months for any subsequent offence.

Although the Act prohibits anyone other than an active member of the Law Society from practising law, it does make some exceptions. The effect of the exceptions is to allow individuals to act on their own behalf in any court matters to which they are a party. This means that an individual can present his or her own case in court, whether it be in a civil or a criminal matter. The exceptions also make it possible for individuals to write their own wills and sell their own homes, cars, or any other property they own, without the involvement of a lawyer.

There are many legal transactions and procedures which can be safely and inexpensively undertaken by the layman, provided that he or she is equipped with adequate information. The restrictions and prohibitions contained in The Legal Profession Act are not intended to deter individuals from doing these things themselves. Rather, they are designed to protect the public from being taken advantage of by untrained and incompetent persons who have not met the standards established by The Legal Profession Act.

When You Need a Lawyer

There are certain times when it is uneconomical to hire a lawyer. For example, in collecting a debt for a few hundred dollars or attempting to collect maintenance from a spouse who may have little money. In such cases there are courts established for people who wish to act on their own behalf. In Alberta, the Small Claims Division of the Provincial Court has jurisdiction in matters where the claim is for a debt or damages not exceeding \$2,000. In most instances in this court people state their case without resorting to legal counsel. Similarly, the Family Division of the Provincial Court is used to a large extent by people not represented by lawyers, to claim maintenance for themselves or their children. Sometimes a simple real estate transaction can be handled by individuals acting on their own behalf, or a deceased person's will may be probated without the help of a lawyer. However, the above examples notwithstanding, there are definitely some legal problems which are best dealt with by lawyers because their expertise in these areas will save their clients costly mistakes. The areas in which it is advisable to secure legal counsel are:

- (1) drafting a will,
- (2) filing for a divorce where custody of children or division of property cannot be agreed upon, and
- (3) any court action in which a lawyer will be representing your opponent.

A Lawyer's Duty to Clients

By way of examining this important area, let us suppose that you need legal counsel and that you retain Henry Hindsight, a member of good standing of the Alberta Law Society, to represent you. In his duty to you, the client, Henry Hindsight should act only for you. Once having acted for you, he cannot act against you in the same matter or in any other related matter. At the time he accepts your fee by which you retain, or hire him as counsel, he must disclose to you any relations he has with the other parties and any interest or connection he might have in the controversy which might influence your decision to retain him. He cannot represent any conflicting interest. It is his duty to obtain full knowledge of your case before he advises you, then he must give you an honest opinion of how your case stands in relation to the law as well as the probable results of any upcoming or proposed court action. He must also try to avoid going to court if your action can be settled outside the court in a satisfactory manner. Henry must always work within the bounds of the law and he must follow the code of ethics set down by the Bar association. He is not permitted to make any money from confidential information he has received from you in the course of the case. He cannot acquire by purchase or otherwise (unless the law expressly allows it) any interest in the goods or property involved in the court case being conducted by him. This restriction also applies to all persons working in his office. Henry must deposit any money he might receive on your behalf in a specially set up trust fund and immediately report receipt of such money to you.

He must not mix his own money with this trust money unless you expressly tell him to do so.

After you have hired Henry and he has accepted you as a client, he can withdraw from the case in the following circumstances:

- (1) if you refuse to advance sufficient money for conducting the case;
- (2) if he cannot obtain instructions from you, or if you are not capable of instructing him;
- (3) if you instruct him to take some form of action which he knows to be dishonorable; if your claim is fraudulent or fictitious or if, after accepting the retainer, a conflict of interest arises which forces him to withdraw.

If you feel that Henry is not fulfilling his duty to you, you are entitled to fire him and seek help elsewhere, although you must pay what you owe him. You may also complain to the provincial Bar Association if you feel his conduct is illegal, improper or unethical.

When Henry sends out his final bill, he will charge you for all the out-of-pocket expenses, commonly called "disbursements," that he has incurred. For example, if you are buying a house, you will have to pay Henry for his cost in searching the title to your house, his cost in registering your deed, plus any other expense he might have incurred such as long-distance phone calls and even postage stamps. In a court case, his expenses include the cost of issuing a writ and having it served, plus all other costs involved in bring the action to trial. These disbursements will be listed separately in the statement sent to you, and are in addition to his fee.

If you refuse to pay Henry's bill, he has various remedies open. He can sue to recover his fees and disbursements. If he is successful, then you will be charged for another set of costs, as the court will hold you responsible for Henry's cost in collecting his money. Henry may also keep property of yours that he may have in his possession until he is paid. However, if there is a third party with a legitimate interest in the possessions held by Henry, he must relinquish them to this third party. Otherwise, he is entitled to hold them until his bill is paid in full. If Henry recovers personal property for you under a court judgment, he may ask the court to hold the property as security for his unpaid fee. Henry's claim on this property covers only the cost of the proceedings concerned, not unpaid fees relating to other matters. If money in a settlement has been paid to the court for transfer to his client, Henry who has not been paid, may ask the court not to pay the client until he, the lawyer, has been notified.

Henry may also have his bills "taxed" by the court. When Henry is "taxing" his bills, he is, in effect, asking the court to declare that his charges to the client are perfectly proper in view of the results achieved and the difficulty involved. Once his bill has been approved, Henry may proceed to issue a writ against the lands and goods of the client by which he has the right to instruct the sheriff of the county to seize possessions of the non-paying client. Furthermore, Henry has the right to garnishee, or seize, part of the client's wages for non-payment.

If you receive a bill from your lawyer that, for whatever reason, you feel is too high, you may also apply to have the bill taxed at the local courthouse. In one such case the taxing office of the Ontario Supreme Court reduced one bill from \$24,000 to \$4,000.

To avoid any of the preceding situations, you should always ask your lawyer what the approximate cost of handling your problem will be, plus the likely total of any disbursements the lawyer will be required to make on your behalf. Then, if you feel the fee is going to be higher than you can afford, you can either try to work out a time-payment arrangement, or look for other alternatives.

Court Personnel

There are many people involved in the administration of justice besides lawyers and judges. Some of these people are quite visible while others carry out their duties behind the scenes. We can divide these legal personnel into three groups:

- (1) those who work either in the courtroom or within the system that supports the courts,
- (2) those who work specifically within the Family Court System, and
- (3) those who exercise some sort of statutory authority.

The first group includes a number of court and court-related personnel who, in general, are responsible for keeping the court system running. They perform various roles in the courtroom which assist the judge and the lawyers in the pursuit of justice. Their duties outside the courtroom are no less important, and are indeed rather extensive.

The second group includes family court counsellors, the Family Conciliation Service, and the *amicus curiae* (children's advocate). These personnel all form a significant part of the Family Court of Alberta.

The third group includes justices of the peace, commissioners for oaths and notaries public. Individuals holding these offices are vested with their authority by a statute, which gives them the power to give legal status to certain specified acts and transactions.

The court-related personnel mentioned here are virtually the same in all the courts of Alberta. Whether you are involved with the Court of Queen's Bench, the Court of Appeal, the Surrogate Court, the Family Court, or one of the Divisions of the Provincial Court, and whether you live in a large, urban centre or a remote, rural area, you will meet, see, or otherwise come into personal contact with some of the people involved in the administration of justice in Alberta.

The following legal system personnel includes those who can be found in all courthouses and courtrooms. These are the people responsible for the administration and smooth functioning of the judicial process in Alberta. Some perform tasks with which the public has very little contact, while others are very often involved with the public in providing assistance and information, or in carrying out the orders of the court.

Clerk of the Court

The clerk of the court, called the administrator, is responsible for the administration of the courts and court related services in Alberta. In addition to having responsibility for the daily administration of the court office, the administrator has judicial and quasi-judicial duties in the courts. These involve the offices of the deputy clerks for the various levels of courts in the province, as well as the offices of deputy registrar in bankruptcy and deputy district administrator for the Federal Court of Canada.

The administrator has a large staff of clerical people, court reporters, judicial clerks, and other court officials who assist in carrying out the duties of this office.

Judicial Clerk — The judicial or court clerks are officers of the court who assist the administrator in the administration of the courts. Their duties vary according to the level of court in which they function. Generally, they have some clerical duties, some administrative duties, and some courtroom duties. In the courtroom they call the court to order, read the charges and record the pleas (in criminal matters), swear in witnesses, record the judge's findings, and assist the presiding judge if required.

The other court duties of the judicial clerk are quite varied. Their counter duties include the examination of documents related to court proceedings before they are filed with the court. For example, in the office of the Small Claims Court, the clerk will look over summonses, and even help to correct them, before they can be filed. The judicial clerk is also responsible for correctly numbering, dating, and filing the documents which become part of the court record. There is a fee for filing documents with the court and the clerk is responsible for collecting these fees. The clerk also receives payments of claims and judgements. In general, the judicial clerk, in his or her counter duties, assists the public by providing information related to any court proceedings in which they are involved.

The office duties of the clerk include typing, filing, preparation of files for court sittings, answering telephone enquiries, and compiling court-related statistics.

Court Reporter — Court reporters are officers of the court. They are present in the courtroom during trials to make a verbatim record (transcript) of the proceedings. The proceedings are recorded either in shorthand or with the use of a mechanical recording device similar to a typewriter. There is also a tape recording made of the proceedings to ensure accuracy.

Court reporters also record the proceedings at the pre-trial hearing known as an examination for discovery. As well, they may be required to record other proceedings before a court or a judge, and any oral examinations under oath.

Although the general public has little, if any, contact with court reporters, they are very much in evidence at any court proceeding. Court reporters sit in front of the judge's bench next to the judicial clerk.

The Assistant Sheriff — The court administrator is also the sheriff, but in practice most of the sheriff's responsibilities are carried out by the assistant sheriff and supporting officers. The major responsibilities of the sheriff include: obeying and enforcing orders of the court with respect to arrest and imprisonment, and seizure of goods and monies; keeping safe custody of anything seized; controlling the development and attendance of juries; supervising the distribution of monies paid into court; authorizing the sale of seized chattels; and ensuring the protection of creditors' and debtors' rights. In addition to these functions, the sheriff also has certain administrative duties associated with the proceedings of the courts.

Bailiff — The bailiffs, or sheriff's officers, are responsible for assisting the sheriff. These officers personally serve documents according to the requirements of the Rules of Court of Alberta and other legislation specifically related to any matter at hand. For example, a sheriff's officer is often called upon to personally serve on the defendant a Statement of Claim, the document which commences a lawsuit.

Seizing goods as directed by the deputy sheriff is also a major responsibility of a bailiff. For example, when someone has defaulted in payments for a car, the creditor can enlist the assistance of the sheriff's office in repossessing the vehicle.

The sheriff's officers are also required to dispossess and evict tenants whose tenancy has been terminated, but who have failed to vacate the premises. Associated with these duties is a requirement for the preparation of reports and documents in support of service of documents and seizure of goods.

The last major function of a bailiff is related to jury trials. The jury's security is the responsibility of the sheriff, so the sheriff's officers are called upon to attend upon and guard the jury.

Court Security Officer — The court security officer is responsible for the maintenance of court security and order. This involves checking the courtroom before it is opened, escorting prisoners to and from the courtroom, being responsible for the police file in the courtroom and, in general, ensuring that order and security are maintained.

The court security officer is usually a member of either the municipal police force or the R.C.M.P. This will depend on both where the court is located and what level of court is involved. For example, in Provincial Court in Edmonton, the court security officer is usually a member of the Edmonton City Police. Where a court security officer is required in the Law Courts in Edmonton, for example in a criminal trial in the Court of Queen's Bench, the officer is usually a member of the R.C.M.P. Similarly, in the centres which do not have their own police force, the R.C.M.P. are called upon to act as court security officers.

Court Orderly — The court orderlies are responsible for security within the civil court, in particular the Court of Queen's Bench and the Court of Appeal. Their function is analogous to that of the court security officer in the Provincial Court. The court orderlies act as liaison between the judges, the legal profession, and the public. Besides ensuring the security of the courtroom, they are also responsible for the security of the judges. Court orderlies screen those individuals wishing to see a judge, and they escort judges to and from the courtroom. If there is a jury trial, they are responsible for paging witnesses and transmitting requests from the jury to the presiding judge.

Other duties include assisting the public who come to the court house, conducting tours of the court house, and explaining the operation of the court system to interested groups.

The following grouping of legal system personnel is composed of those who are to be encountered either within the Family Court, or in connection with family legal matters being heard in any other Alberta court.

Family Court - Family Legal Personnel

Family Court Counsellor — The Family Court Counsellor Service is provided by Alberta Social Services and Community Health. This is a support service of the Family Court and acts on referral by judges of the court, or on requests from individuals who require information, assistance, or advice. For example, a counsellor may be asked by the court to conduct interviews at school and at home to report on conditions in the case of child custody or access disputes. As well, anyone may make an appointment to see a counsellor regarding rights and alternatives in family-legal situations. There is no requirement that a person be referred, or that they be involved in the court process to avail themselves of the counsellors.

If you go to see a family court counsellor, you can also expect assistance in preparing for, and complying with, court procedure. In providing this before-court service, court counsellors are primarily concerned with getting information to the court, rather than exploring avenues of reconciliation with couples. Usually, the counsellor's purpose is accomplished in one or two interviews with a client.

A counsellor will be able to explain what your rights are in your present situation, and what alternatives are open to you in pursuing those rights. Specifically, a counsellor may provide information on maintenance, custody and access, or assist you in filling in an application to the court, accompany you to court, and take informations (forms which start the investigation process) for incidents involving assaults and threats, non-support, or mental health commitment issues.

Where a family court counsellor encounters a situation which requires more intensive or more personal counselling than she/he is prepared to administer, the client may be referred to another agency.

The service of these counsellors is free and available through any Family Court in Alberta.

Family Conciliation Service — The Family Conciliation Service is another service of Alberta Social Services and Community Health. It provides personal counselling for those whose marital disputes have developed to the stage where a lawyer or court has become involved. To use this service, a person must be referred by a lawyer, a family court counsellor, or a judge.

The purpose of this service is to provide a means of reconciliation for some marriages, and to promote and develop a healthy attitude where, in some marriages, divorce appears inevitable.

Four types of counselling services are offered: reconciliation counselling for families willing to remain intact; divorce counselling for those proceeding in this direction; counselling for children involved in divorce; and post-divorce counselling for those who require assistance in adjusting to new life roles. Counselling may take place before court proceedings begin, or a trial may be adjourned by the judge if it is felt the parties would benefit from counselling.

The principle of the counselling service is that it must be voluntary. If you request counselling through your lawyer or agree to the judge's suggestion, you must be willing to participate. The counsellor will assist you in deciding whether the best action is reconciliation, or separation and divorce, and how to take steps to achieve a positive outcome in either event. This is particularly useful in custody/access disputes for assisting parents to come to a reasonable solution, one which best accommodates the child's needs. Where it is necessary, the Family Conciliation Service may refer families to community services which may be helpful, such as addiction clinics or psychiatric care.

Any specific information divulged to a counsellor is considered confidential and is repeated only if consent is given, or if the court orders the information released.

At the end of the conciliation process a report is sent to the lawyers involved (and judge if necessary) regarding the final outcome of the interviews.

Amicus Curiae — The amicus curiae, or "friend of the court," plays a valuable role in the support services of the Alberta courts. The amicus curiae is a lawyer who represents the interests of children in disputes over custody and access. An amicus curiae may become involved in a dispute at the request either of the involved parties, a lawyer, or a judge. There are two types of amicus curiae service. One is provided by the Alberta Department of the Attorney General, and the other is provided by private practitioners.

When an amicus curiae is called on to represent a child or children's interests, it is important that the people involved understand what that means. This representation does not mean acting for the child in an adversarial manner. In fact, the amicus sets about investigating the needs of the child, and the conditions which presently exist, and recommending a course of action which would best benefit the child. In accomplishing this it is often necessary to make use of the services of psychologists and social workers to interview the child and examine both the home and school environments.

Court Personnel with Statutory Authority

This last grouping of legal system personnel consists mainly of those who are connected to the legal system through their statutory authority to give legal status to certain specified acts and transactions. These are individuals with whom members of the public are often in contact, but they are not always to be found in the court environment.

Commissioner for Oaths — A commissioner for oaths is appointed by the Inspector of Legal Offices. The inspector is a lawyer appointed by cabinet to inspect the books and documents of court clerks, sheriffs, coroners, and other offices connected with the administration of justice. Since 1928, it has been the Deputy Attorney-General who has been appointed to this post. Every lawyer and articulated (apprenticed) law student is also a commissioner for oaths. Every M.L.A., school board trustee, municipal counsellor, and commissioned Armed Forces officer is an *ex officio* (as long as that office is held) commissioner. All of the above are allowed to take oaths and affirmations inside or outside Alberta for use inside Alberta. There are certain commissioners who take oaths for use outside Alberta, and designate themselves as such. There is a fine for people who wrongly sign documents as commissioners for oaths.

Oaths or affirmations are used to certify that the person making statements in a document is who she/he says she/he is, and that the person promises to stand behind the truth of their statements. A person who knowingly swears a false statement is guilty of perjury. These sworn statements are used to verify necessary facts in many proceedings such as probating wills, getting married, and serving another party with legal proceedings against them. These sworn statements are necessary even for actions commenced through Small Claims Court. Often these sworn documents are called "affidavits."

An *oath* and an *affirmation* are the same in effect, but differ in wording. An oath uses the name of God to bind the conscience of the swearer. If a person objects to swearing to an entity they don't believe in, or that their conscience doesn't recognize, that person can ask the commissioner to take an affirmation, and no deities or spirits are invoked. A nominal fee (about \$1.00) is levied for the services of a commissioner for oaths.

Notary Public — A notary public is appointed by the Attorney-General. All lawyers, articulated law students, judges, and M.L.A.'s are *ex officio* notaries public. Notaries public may take oaths and affirmations just as a commissioner for oaths may. However, a notary's duty extends to issuing certain deeds and contracts peculiar to wholesale and commercial transactions. An appointment lasts for two years, or may be revoked for cause. There is a nominal fee ranging from fifty cents to \$1.50 for the services of a notary public.

Justices of the Peace — The functions of justices of the peace in Alberta are much closer to those of judges than commissioners or notaries public. Justices of the peace are either appointed by the cabinet, or are Provincial Court Judges acting as justices. Lawyers, other than those who have been made Provincial Court Judges, cannot be appointed justices of the peace.

The types of justices are determined by the Criminal Code powers that they are limited to. The two main categories of justices are police justices, and court staff and fee justices. The police justices have their powers restricted to accepting violation ticket complaints and the relating affidavits. The court staff and fee justices take *information* (sworn reports against persons alleged to have committed criminal acts) and related affidavits. They also validate service of process documents (documents used to involve others in a person's court action), receive *information* to search, issue search warrants to police, and attend to all judicial interim release (bail) work.

A sub-type of court staff justice is the *hearing officer* who has all of the powers of the court staff justice, plus the power to:

- (a) accept guilty pleas on charges with specified penalties, assess those penalties and grant time to pay fines, or establish jail terms and issue warrants of committal for those not paying fines;
- (b) accept not guilty pleas and schedule trials for offences with specified penalties;
- (c) schedule trials for mandatory court appearances where the arresting officer has chosen not to give a specified fine;
- (d) grant interim applications with respect to the rescheduling of trial dates.

The public does not generally come into contact with the police justices, as these justices accept documents brought in by police. The fee justices, who are located at police stations, serve the public on judicial interim release matters and, less commonly, on private citizen complaints. Court staff justices, located at all levels of court, deal with judicial interim release matters. Hearing officers, however, deal with the public constantly, and are located at the Civil Division, Provincial Court, in both Edmonton and Calgary.

Closing Thoughts

One of the purposes for which law courts exist in democratic states is to protect the citizen's rights and freedoms. Today, throughout the world, such rights and freedoms are a valued possession of those who enjoy them, and a desired goal for those who do not. Practically every leader in any country, regardless of its type of government, will claim that the citizens of his country enjoy valuable rights or will soon enjoy them. Thus all countries regard them as important even if, in actual fact, the people do not possess them. This world-wide respect for fundamental freedoms was clearly shown in 1949 when the United Nations General Assembly passed the Universal Declaration of Human Rights. In its preamble it stated that "All peoples of the U.N. reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person, as well as recognition of the equal and inalienable rights

of all members of the human family." In Article 1 (a) it further declared that "all human beings are born free and equal in dignity and rights," while in Article 3 it stated that "everyone has the right to life, liberty, and security of person." In this declaration one can observe the fundamental belief that all human beings are entitled to the same basic freedoms and rights. Amongst these freedoms we can list freedom of speech, of the press, or worship, movement, association, meeting, as well as freedom from arbitrary arrest.

In democracies such as Canada, the courts are regarded as the main defender of civil liberties. It is the constant and persistent reliance upon the common law that enables the court to uphold and maintain these freedoms. For it is in the common law that our civil liberties and rights reside (although in Canada they are now upheld by statute), and it is the common law that serves as the main line of defence against challenges to these rights and freedoms.

Exercise 1

Define the following terms as they relate to law. If you are unsure as to their meaning, consult your lesson notes or a dictionary.

1. acquit - _____

2. adjournment - _____

3. attorney - _____

4. bail - _____

5. disbursements - _____

6. extradition - _____

7. felony - _____

8. gaol - _____

9. jury - _____

10. litigants - _____

11. persona non grata - _____

12. prima facie - _____

13. puisne - _____

14. rota - _____

Exercise 2

Indicate whether each of the following statements is True or False by circling T or F in the space provided.

1. The most important right guaranteed by the Charter of Rights and Freedoms is the enjoyment of due process of law. T F
2. Every law restricts the freedom of the individual in some way. T F
3. Every judge is simply an agent who is trying to carry out the policies of the government who appointed him. T F
4. Justices of the peace have no power to try indictable offences. T F
5. Court of Queen's Bench judges are appointed by the Lieutenant-Governor in Council. T F
6. Decisions handed down by the Supreme Court of Canada may be appealed to the British House of Lords. T F
7. A preliminary hearing is held in the Court of Queen's Bench which has jurisdiction in the area where the offence occurred. T F
8. Alberta has entered into a contract with the R.C.M.P. to enforce criminal and provincial laws. T F
9. Persons must answer any question asked by police, whether they have been arrested or not. T F
10. The law demands that a citizen must come to the aid of the police if directly requested to do so. T F
11. Persons who have been acquitted of charges against them can sue the Crown for damages and for the cost of their defense. T F
12. Parole is granted automatically to prisoners who have served one-third of their sentence. T F
13. In actual practice, the power of Queen's pardon is exercised by the federal Minister of Justice. T F

- | | | |
|---|---|---|
| 14. Law societies in Canada forbid any advertising by their members. | T | F |
| 15. Individuals may represent themselves in any court matter to which they are a party. | T | F |
| 16. A lawyer is permitted to make money from confidential information received from a client. | T | F |
| 17. Only lawyers, not clients, may ask the court to "tax" their bills. | T | F |
| 18. The court administrator is also the sheriff. | T | F |
| 19. In communities which do not have their own police force, private security guards are hired to act as court security officers. | T | F |
| 20. Family Court counsellors charge a fee for their services. | T | F |
| 21. There is a fee charged for the services of a notary public. | T | F |

Exercise 3

Fill in the blank spaces in the following statements; only one term is required for each space.

1. The rule of law acts as a deterrance against the abuse of _____.
2. Law in a _____ is the set of rules and regulations which the people have agreed upon to make possible an ordered life.
3. Criminal law is the responsibility of the _____ government.
4. Judges must retire at the age of _____.
5. The Supreme Court of Canada is composed of _____ judges.
6. Every criminal case originates in _____ Court.
7. Provincial Courts were formerly called _____ Courts or _____ Courts.

8. The person who initiates a court action is called the _____
and the other party is called the _____.
9. In Alberta, a jury in criminal cases is composed of _____
jurors.
10. In Alberta, those areas that do not have a municipal police force contract out
law enforcement duties to the _____.
11. _____ is a police organization which keeps watch on the
international activities and travel of known criminals.
12. Sheriff's officers are required to attend upon and guard the
_____.
13. Court orderlies are responsible for the security of the _____.
14. A person who knowingly swears to a false statement is guilty of
_____.
15. In Alberta, the Small Claims Division of the _____ Court has
jurisdiction in matters where the claim is for a debt or damages not exceeding
_____.
16. Court reporters are present during trials to make a _____ of
the proceedings.
17. Justices of the peace take _____, which are sworn reports
against persons alleged to have committed criminal acts.
18. In democracies such as Canada, the courts are regarded as the main defender
of _____.

Exercise 4

1. What is meant by the "supremacy of law"?
-
2. There are basically two kinds of law:
- (a)

(b)
3. Who assumes the responsibility for bringing a criminal to trial?
-
4. Why was the federal government given the authority to appoint judges?
-
5. "The role of the judiciary in our system of government is especially significant since our constitution is not entirely written." Explain this statement.
-
6. Briefly describe the types of cases heard by the Supreme Court of Canada.
-

7. Briefly describe the types of cases heard by the Federal Court of Canada.

8. Briefly describe the responsibilities of the provincial Attorney-General's department.

Exercise 5

In the space provided write the name of the court of law in which each of the following cases would be tried.

1. Roy Tineer, 13 years old, is accused of shoplifting.

2. Betty Cleaver sues Mary Tryte to recover a debt of \$85.00.

3. The estate of the late John McCormack is to be settled by his heirs.

4. John Shawky receives a parking violation ticket for parking in a restricted zone in front of the local library. He tears up the ticket and fails to pay the fine. Eventually he receives a summons to appear in court.

5. Margaret Blair has initiated divorce proceedings against her husband.

6. The investigation into the death of an unidentified man whose body was found in the burned ruins of a farm house.

7. The preliminary hearing of the case of Jacob Morley who is charged with embezzling \$8500 from his employer.

8. The trial of Henley Harrod who is charged with murder in the death of his wife's lover.

9. An appeal on a decision given in Small Claims Court.

Exercise 6

1. For what reasons will an adjournment be granted?

2. Why do some people feel that the right of appeal may not be equally available to all?

3. For what reason would a defendant choose a trial by judge alone rather than by a judge and jury?

4. All the police forces in Canada are organized into three groups; they are

(a) _____

(b) _____

(c) _____

5. Under what circumstances may a police officer arrest someone without a warrant?

6. What is the purpose of allowing police officers to issue appearance notices?

7. How does the doctrine of extraterritoriality affect the police's function to enforce the law in Canada?

8. What must the Crown prove at a bail hearing to prevent the suspect from being released?

9. Give three examples of the types of provisions which may be included in a probation order.

(a)

(b)

(c)

10. What is the difference between parole and probation?

11. What is the origin of the term "the Bar" as it applies to court proceedings?

12. What purpose is the Legal Profession Act designed to accomplish?

13. Name three instances where it is advisable to secure the services of a lawyer.

(1) _____

(2) _____

(3) _____

14. State four of the duties associated with the office of Sheriff.

(1) _____

(2) _____

(3) _____

(4) _____

15. What is the role of the amicus curiae in our court sytem?

16. What four types of counselling services are offered by the Family Conciliation Service?

(1)

(2)

(3)

(4)

LESSON RECORD FORM

3430 Law 30

Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

(If label is missing
or incorrect)

File Number

Time Spent on Lesson

Lesson Number _____

FOR SCHOOL USE ONLY

Assigned
Teacher: _____

Lesson Grading: _____

Additional Grading
E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

Lesson Recorded _____

Student's Questions and Comments

Apply Lesson Label Here

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Please verify that preprinted label is for
correct course and lesson.

Teacher's Comments:

Correspondence Teacher

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

- (1) All pages are numbered and in order, and no paper clips or staples are used.
- (2) All exercises are completed. If not, explain why.
- (3) Your work has been re-read to ensure accuracy in spelling and lesson details.
- (4) The Lesson Record Form is filled out and the correct lesson label is attached.
- (5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do **not** enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

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Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a **green first-class sticker to the front of the envelope, and seal the envelope.** Correspondence lessons will travel faster if first-class postage is used.

Try to mail each lesson as soon as it has been completed.

When your register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

CRIMINAL LAW

Introduction

As soon as children are able to understand what they are told, they come in contact with rules, which tell them what they may do and what they must not do. The first rules they come across are usually applicable only in their own home, but as they grow older, they find that in the outside world they are confronted with a wider body of rules called laws. They must not take other people's property, they must not cross a street against a red light, and so on. As they begin to learn more about society and history, they find out that laws have been in existence for many centuries, and that they are a very important part of civilized life.

We know that even prehistoric peoples had rules, customs, and religious observances that were very close to being laws. We also believe that individuals felt a need for these rules and customs to give their society stability and order, so as to provide all the members of the group with some sense of security in a very primitive and insecure world. Evil persons hesitated to break the rules or customs for fear of revenge on the part of the injured party, or because the religious leader might call down a curse from the gods upon the wrong-doer.

Law, in its full sense, does not emerge in history until some means is established by society for catching and punishing people who break the rules. Once the rules and customs are enforced by some agency independent of the injured and injurer, then they become laws. The laws may be enforced by varied groups such as soldiers, police, or by private citizens. The laws themselves may not even be written down, and as long as they are binding upon the government as well as on the governed, then that society is ruled by law.

History

The basis of our criminal law in Canada is derived from the common law of England. It was the early English courts which developed the concepts of law relating to the basic crimes of murder, assault, theft and treason which are the main offenses. These basic concepts were formulated by considering the moral values held by the community as a whole and the principles necessary for the maintenance of authority. One must be aware that during these Anglo-Saxon times (450 A.D. to 1066 A.D.) there was no real distinction between civil wrongs (torts) and crimes. It was up to the person who suffered the wrong to initiate legal proceedings. The idea of a crime being an offence against the State was only recognized in that the wrongdoer was subjected to some form of punishment, but the primary concern of this justice was to compensate the victim.

Persons in those early times who found themselves accused of a crime could defend themselves in one of the following ways:

(1) Trial by Combat

This method of trial involved an armed battle between the accuser and the accused. Women and priests who were involved in disputes could have "champions" fight for them on their behalf. Trial by combat was only available in private matters and could not be used when the Crown was a party to the dispute. It was felt by the participants and those who sanctioned such proceedings, that God would intervene to defend the truthful or honest person.

(2) Trial by Ordeal

This type of trial was basically an appeal to supernatural powers to assist in the decision-making process. The accused would subject themselves to some form of ordeal and if they passed it successfully, they were declared innocent. This type of trial could take many forms, examples being:

(a) Ordeal of Hot Iron

The accused would be given a rod of hot iron and would have to carry it bare-handed a distance of nine feet. The hand would then be bound up and after three days these bandages would be removed. If the wound was unclean and had festered the accused was pronounced guilty.

(b) Ordeal of Cold Water

This form of trial was predicated on the idea that a body of water, which was the symbol of purity, would receive the innocent and reject the guilty. Using this logic, persons accused of a crime would be immersed in the water and if they sank they were innocent, but if they floated they were guilty. Safeguards were implemented to prevent "innocent" people from drowning; however accidents did occur.

(c) Ordeal of the Cursed Morsel

In this trial the accused was forced to swallow a certain type of morsel; an example being a feather inside some type of food. If the accused was able to swallow it successfully they were innocent, but if they choked they were guilty. In another variation of this ordeal both parties were given dry bread and stale cheese to eat while they answered questions. If either party choked, this was felt to be an indication of a guilty conscience.

(3) Trial by Compurgation

This type of trial consisted of the accused swearing an oath to the truth as to their innocence. If the accused or a party to a private dispute could get eleven or twelve "compurgators" or "oath helpers" to swear that they believed the accused's statements to be true, then the accused would win the case. These oath helpers were not witnesses to the facts in the case but simply character witnesses who believed that what the accused said was the truth.

By the twelfth century in England, the monarchy had established a firm power base and began to turn its attention to the administration of the criminal law. Cases in which the Crown had always been interested were known as "pleas of the Crown" and involved trespassing on the king's property and violating his monetary rights, cases involving injury to the king with respect to his royal office such as treason, and cases involving a breach of the king's peace. Initially, the concept of the king's peace referred to the place where the king was residing. Acts of violence within the area of the king's peace were considered to be public wrongs. Ultimately this concept of the king's peace evolved to cover the entire country, and any disorder involved a breach of this peace.

The Norman kings of England made it a practice to listen to appeals from their subjects against unjust decisions given by local judges. It was Henry II in the twelfth century who delegated his judicial functions to full-time judges, called King's Justices. To make justice available to all, the Justices not only held sittings at the royal court at Westminster, but went on regular circuits of the country, holding sittings (or assizes) at all important centres of population. King Henry II also put certain offences in a special category by the statutes of Clarendon and Northampton which provided that twelve men in every hundred (a territorial division) would present to the King's Justice all the serious crimes that were committed in that territory where the Justice came. It was this group's duty to investigate and bring cases to the attention of the judges so that a trial could be held. (They did not decide the guilt or innocence of any particular party.) This group became known as the grand jury. It eventually evolved that the investigative aspect of a case was carried out by the police, but the grand jury still retained the power to decide whether a person should be presented for trial (indicted).

Once the accused was indicted, the trial took place. These trials were initially trials by ordeal, but in 1215 Pope Innocent III issued a decree which forbade any member of the clergy from officiating at any such ordeals. This resulted in the trials losing their supernatural aspect. The Justices therefore had to find a method to trying the accused. It developed that the accused would "put themselves upon their country" which meant they would be judged by twelve of their peers. In the beginning the division between the grand jury and the trying jury (now called petit jury) was hard to define and members of one may have been members of the other. Ultimately, however, the two juries became separate and distinct.

Elements of Criminal Law

There are two elements of any crime, the *actus reus* and the *mens rea*. The *actus reus* is merely the doing of the act or omitting to do something when a person is under a legal duty to act. The *mens rea* involves the persons mental capacity at the time when the crime was alleged to have been committed. For example:

Paul throws his knife and kills Henry. The *actus reus* element is the act of throwing the knife. The *mens rea* element is the state of Paul's mind. Was the act accidental or deliberate? If deliberate, was Paul's intention to kill Henry, or to threaten him, or to warn him, etc.?

This concept of mens rea varies with respect to different offences. Obviously the intent involved in murder is different from that in forgery. Crimes of a complex nature require an intentional act coupled with the intent to produce a specific result; this is frequently called "specific intent." For example:

Phil strikes Robin with the intent of bloodying his nose, but instead kills him. Phil is not guilty of murder. His intent was to strike, not to kill.

It should be noted that in all criminal cases in our legal system the underlying principle is that the accused is presumed innocent until proven guilty beyond a reasonable doubt. It is felt that while this obligation to prove beyond a reasonable doubt may result in the freeing of a guilty person, this is preferable to convicting an innocent one.

The reason(s) why a crime is committed, or the motive(s) behind it, are irrelevant as far as any question of guilt is concerned. Motive, however, is usually a factor in determining the type of punishment the court will decide on. "But your worship," exclaimed the bewildered man as he was being fined for driving at an excessive rate of speed. "I didn't know the limit was only fifty kilometres/hour. I'm a stranger here and not familiar with your laws, and I didn't see the sign, either." Even though this person is being quite honest and demands our sympathy, the ancient maxim is still enforced, "Ignorance of the Law is No Excuse." Far more important than this maxim, however, is the theory of strict responsibility; that is, no mens rea or mental capacity must be proved by the Crown. The mere doing of the act is sufficient for a conviction.

The Criminal Code

If ignorance of the law is no excuse, then the law should be readily ascertainable by everybody. Codification of the criminal law was rejected by the English common law until the mid-nineteenth century when proposals to codify them were made. It had been argued up to that time that the common law system had the advantage of flexibility. However, in criminal law the principle of certainty is of paramount concern. In 1879, a Criminal Code Bill was introduced into the British parliament but failed to pass. However, the idea of a code spread to Canada and was passed into law in 1892. The Criminal Code of 1892 with subsequent amendments, together with provincial statutes and some common law principles form the criminal law of Canada today.

Section 7(1) of the Code states that the criminal law of England in force in a province before the enactment of the Code continues in force except as altered by the Code or any other Act of the Canadian Parliament. This section was almost completely restricted by Section 8 which stated that no person shall be convicted by an offence at common law or of an offence under an Act of the English Parliament. In 1953, when the Canadian Criminal Code was revised, offences contrary to common law, English statutes, and pre-confederation criminal statutes were abolished. Thus, in Canada, there are no common law crimes but only crimes defined by statute.

However, it is possible for common law principles to be applied in the interpretations of a definition of a crime. The best example of this is Section 191 of the Code which defines "criminal negligence." This section states:

- (1) Individuals are criminally negligent who
 - (a) in doing anything; or
 - (b) in omitting to do anything that it is their duty to do,
 - (c) show wanton or reckless disregard for the lives or safety of other persons.
- (2) For the purpose of this section, "duty" means a duty imposed by law.

The courts have held this 'duty imposed by law' to be a duty arising by virtue of either the common law or by statute. In one such case in New Brunswick, the court held that the failure to discharge the common law duty of handling a rifle carefully was held to amount to criminal negligence.

The Criminal Code also did not abolish the common law dealing with legal defences. Section 7, subsection (3) states:

Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force and applies in respect of proceedings for an offence under this Act or any other Act of the Parliament of Canada, except in so far as they are altered by or are inconsistent with this Act or any other Act of the Parliament of Canada.

The most important defence to a crime - the absence of mens rea or a guilty mind - is not expressly stated in the Code. Other defences that are not defined in the Code are automatism, necessity and intoxication. These defences are retained as common law defences and apply to provincial as well as federal offences. Naturally intoxication cannot be a defence where the state of intoxication is part of the definition of the crime, such as drunken driving. Other common law defences such as insanity, infancy, provocation, self-defence and compulsion have been codified.

The Code is most specific and definite in its terms. No action or conduct is a crime unless it is expressly stated to be a crime in the Criminal Code or other criminal legislation. You cannot be convicted for some act that a court finds morally wrong or offensive unless it is expressly made an offence in the Code. On the other hand, defenses that can be put forward for criminal acts are not restricted to those set down in the code; you can offer any defense that is a defense under the broad range of common law.

A particularly commendable feature of the Criminal Code is that it is written in reasonable simple language, with most technical terms carefully defined. However, it must be emphasized that criminal law as a whole is one of the most complex fields of justice. It is one thing to be able to generally understand the written law, but quite another to be able to put it to use in the courtroom. The practice of criminal law is so complicated, and the penalties potentially so severe, that no laypersons accused of a crime should ever consider trying to conduct their own defense.

Other Criminal Legislation

It is true that the Criminal Code does contain the bulk of the criminal law in Canada, however, it has been necessary for the federal government to include criminal law in other acts. Examples are found in such federal statutes as the Narcotic Control Act and the Young Offenders Act among others.

The federal government, under Section 91(27) of the British North America Act, has exclusive jurisdiction to define crimes and rules of procedure in legal cases. The Criminal Code is a federal statute, but the provinces are responsible for the administration of it under Section 92(14) of the B.N.A. Act. Thus, except in the case of a final appeal to the Supreme Court of Canada, provincial courts exercise jurisdiction over all criminal proceedings. Both the federal and provincial governments have jurisdiction to maintain penal institutions; a convicted person may be sent either to a federal penitentiary or a provincial prison, depending on the length of the sentence. A person convicted of a provincial offence is not sent to a federal penitentiary; the sentence must be at least two years consecutive before a prisoner is sent to a federal institution. A prisoner is sent to provincial prison for sentences two years less a day. The power to enforce provincial laws is found in Section 92(15) of the B.N.A. Act which states that the province may impose punishment by fine, penalty or imprisonment. The prosecution of those accused of being in violation of a provincial statute are conducted in a manner like that of an ordinary criminal proceeding.

The provincial governments have delegated some powers to municipalities to pass by-laws and regulations which are enforced by the imposition of fines or periods of imprisonment. These by-laws cover such areas as traffic regulations, building standards and the licensing of businesses.

With the passing of time since the enactment of the Criminal Code in 1892, the nature of crime has changed considerably. For example, no provision was made in the original Code to prosecute hijackers of airplanes or those who misuse the public airwaves (radio and television signals) because these things did not exist. The power of the federal government, however, does extend to the definition of new crimes. With changing times and new problems, new laws have been and will be passed to cover these situations as they arise. In many of the provinces (Alberta is one) there are now Law Reform Commissions which have been charged with the function of inquiring into matters relating to the reform of the law having regard to both the statute law and the common law. At the federal level there is the Law Reform Commission of Canada whose purpose is to study, and keep under review on a continuing basis, the statutes and other laws comprising the law of Canada with a view to making recommendations for their improvement, modernization and reform.

One piece of legislation which will have a substantial effect on the legal rights of the citizen is found in the Charter of Rights and Freedoms contained in the Constitution Act passed in 1982. Few of these rights are spelled out in exact terms, and in most instances the language of the Charter is deliberately vague. It will be up to the courts to decide, based on the particular facts of each case, whether or not "the principles of fundamental justice" have been breached; whether or not a search is "unreasonable"; or whether arrested persons have been informed "promptly" of the reasons for their arrest.

Let us now look at some specific sections of the Charter to see how they may affect those who are accused of breaking the law.

Section 10(b) compels the police to inform the accused upon arrest that they have a right to get a lawyer, and they must be given an opportunity to do so, but there is no requirement that the police or the court actually must provide the accused with a lawyer in any given situation. And there is nothing in the Charter which will allow an accused to extend and delay these efforts to get a lawyer so as to hamper the administration of justice as, for example, is sometimes attempted in breathalyzer cases.

Section 24(1) gives the courts great flexibility to remedy situations where a Charter right has been breached. It does not specify what those remedies will be, however, a combination of the Charter right to be tried within a "reasonable time" (section 11(b)) and the general provisions in cases of interminable and unwarranted delay in proceedings may result in the case against the accused being dropped. However, it is doubtful if this remedy would be applied in cases where the accused has caused, or consented to, all or some of the delay. Once again, therefore, questions of reasonableness as interpreted by the judge are likely to be of paramount importance.

Section 24(2) deals with the use of illegally obtained evidence. In the past Canadian courts have allowed such evidence to be presented, subject to certain exceptions in wiretap cases, and to the special rules which require that a confession be proved to be *voluntary* before it is received into evidence. Section 24(2) effectively overrides this procedure, and allows a court to exclude evidence obtained in violation of the Charter in a case where its use at trial "would bring the administration of justice into disrepute." Whether this will amount to much in practice remains to be seen. Note that Section 24(2) does not apply to illegally obtained evidence as such, but only to evidence obtained in violation of the Charter. It is probably a reasonable assumption that not every illegal search and seizure will be regarded as a violation of the right "to be secure against unreasonable search or seizure" contained in Section 8 of the Charter.

Finally, we come to Section 15 of the Charter which declares every individual's right to equality before and under the law, and the right to equal protection of the law. Section 15 furthermore states that everyone has the right to the equal protection and equal benefit of the law without discrimination. The last part of the Section 15(1) sets out particular forms of discrimination that are deemed to be offensive. These are race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

Participants to a Crime

Originally in common law there were four participants in a crime:

- (1) principals in the first degree - the perpetrators,
- (2) principals in the second degree - those present and aiding and abetting the perpetrator during the commission of the crime,
- (3) accessories before the fact - those who counsel, procure or render assistance to the perpetrator before the act,
- (4) accessories after the fact - those who help the perpetrator to escape.

The distinction between the first three models of participation is no longer of any importance since all are judged to be equally guilty of the crime and all are liable to the same punishment. The position of the accessory after the fact is different, however, as this person must be indicted as such and not as a principal. Note that the maximum penalty for an accessory after the fact is defined by the Criminal Code as imprisonment for a maximum of fourteen years or one-half the sentence of the perpetrator.

Specific sections of the Canadian Criminal Code dealing with the participants to a crime are now presented together with some illustrative examples.

Parties to an Offence

Section 21.

- (1) Everyone is a party to an offence who
 - (a) actually commits it,
 - (b) does or omits to do anything for the purpose of aiding any person to commit it, or
 - (c) abets any person in committing it.
- (2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and anyone of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

Example of Section 21(1):

A security guard who leaves his post with the intention of allowing access to a building is a party to the offence of break and enter. However, a security guard who leaves his post for some purpose but without the intention of assisting any person(s) to enter the premises, is not guilty of being a party to a crime of break and enter.

Example of Section 21(2):

Long and Short agree to rob a drug store. During the robbery attempt, Long shoots and kills the druggist. Short should have known that this other crime was a probable consequence of carrying out the robbery. Short is guilty of robbery and murder as well as Long.

Counselling a Person to Commit an Offence

Section 422

Except where otherwise expressly provided bylaw, the following provisions apply in respect of persons who counsel, procure or incite other persons to commit offences, namely,

- (a) everyone who counsels, procures or incites another person to commit an indictable offence is, if the offence is not committed, guilty of an indictable offence and is liable to the same punishment to which a person who attempts to commit that offence is liable, and
- (b) everyone who counsels, procures or incites another person to commit an offence punishable on summary conviction is, if the offence is not committed, guilty of an offence.

Example of Section 422:

Jack plans to rob a local bank. He contacts Bob who works in the bank and knows every detail concerning burglar alarms, floor plans, etc. Bob advises Jack as to the best way to break in and steal the money from the vault. Jack is arrested while trying to gain entry to the bank. He tells the police of his plan and of Bob's involvement. Bob is charged with attempted robbery.

An Accessory After the Fact

Section 23.

- (1) An accessory after the fact to an offence is one who, knowing that a person has been party to the offence, receives, comforts or assists the person for the purpose of enabling the person to escape.
- (2) No married person whose spouse has been party to an offence is an accessory after the fact to that offence by receiving, comforting or assisting the spouse for the purpose of enabling the spouse to escape.

Example of Section 23:

Burgess, an accountant, steals \$200,000 from his employer's safe. Burgess' wife hides him during the ensuing police search. She buys him an airplane ticket and drives him to the airport where he is arrested. Mrs. Burgess is not an accessory after the fact to the crime of theft.

Attempting to Commit a Crime

Section 24.

- (1) Everyone who, having an intent to commit an offence, does or omits to do anything for the purpose of carrying out this intention is guilty of an attempt to commit the offence whether or not it was possible under the circumstances to commit the offence.

- (2) The question whether an act or omission by a person who has an intent to commit an offence is or is not mere preparation to commit the offence, and too remote to constitute an attempt to commit the offence, is a question of law.

Example of Section 24.

Syd plans to rob a bank. While driving to the bank, he is stopped by the police for a minor traffic violation. When the police see the burglary "tools" in the back seat of the car, they arrest Syd and charge him with attempted robbery.

Conspiracy to Commit a Crime

Section 423:

- (1) Except where otherwise expressly provided by law, the following provisions apply in respect of conspiracy, namely,
- (a) everyone who conspires with anyone to commit murder or to cause another person to be murdered, whether in Canada or not, is liable to imprisonment for fourteen years;
 - (b) everyone who conspires with anyone to prosecute a person for an alleged offence, knowing that the person did not commit that offence, is liable
 - (i) to imprisonment for ten years, if the alleged offence is one for which, upon conviction, that person would be liable to be sentenced to imprisonment for life or for fourteen years, or
 - (ii) to imprisonment for five years, if the alleged offence is one for which, upon conviction, that person would be liable to imprisonment for less than fourteen years;
 - (c) everyone who conspires with anyone to induce, by false pretenses, false representations or other fraudulent means, a woman to commit adultery or fornication, is liable to imprisonment for two years; and
 - (d) everyone who conspires with anyone to commit an indictable offence not provided for in paragraph (a), (b) or (c) is guilty of an indictable offence and is liable to the same punishment as that to which an accused who is guilty of that offence would, upon conviction, be liable.
- (2) Everyone who conspires with anyone
- (a) to effect an unlawful purpose, or
 - (b) to effect a lawful purpose by unlawful means, is guilty of an indictable offence and is liable to imprisonment for two years.

The principle of the offence of conspiracy is the agreement itself, and it is not necessary to prove that any steps were taken to carry out the plan. There must be a real intent to do something illegal. If one party pretends to agree but has no intention of carrying out the agreement, there is no conspiracy.

Criminal Offences

In Canada there are two main categories of crime:

- (1) indictable offences, which are grave crimes, punishable by imprisonment in a federal penitentiary for at least two years; and
- (2) summary conviction offences, which are relatively minor infringements of the law, punishable by fine or by imprisonment for up to two years.

These two terms refer to the procedure to be followed in the prosecution of an accused person. The Criminal Code and other statutes specify which procedure to take, but it is possible for a crime to be subject to either. For example, dangerous driving can be classed as an indictable offence for which the maximum penalty is two years, or it can be classed as a summary conviction offence for which the maximum penalty is six months.

In such cases, it is up to the Crown to decide how it will prosecute. Its decision will be based on the seriousness of the case. As in the preceding example, if the dangerous driving resulted in the death of some innocent party, the driver would be charged with an indictable offence. However, if the dangerous driving resulted in only minor property damage, the case would likely be proceeded with as a summary conviction offence.

The Specific Charge

It is a fundamental principle of our law that a person must be charged with a specific crime. A general accusation of misconduct will not be considered by the courts. Before individuals can be convicted they must be found guilty of the specific crime with which they are charged. If the evidence presented in court shows criminal activities which are unrelated to the specific charge, a conviction will not be obtained.

Example:

Wallace is charged with the illegal possession of heroin for the purpose of trafficking. During his trial it is brought out that he is in possession of an illegal firearm, has failed to file an income tax form for three years, and is driving his car while his driver's license has been suspended. However, unless the specific charge of trafficking can be proved, he must be acquitted. To be convicted for his other misdeeds, he must be specifically charged.

There is an exception to this rule though. Accused persons may be convicted of an offence other than the one with which they are charged, if it is an included offence. An included offence is one that is part of the offence charged, and is usually a lesser charge. For example, a charge of manslaughter is an included offence in a charge of murder. As a result, a person charged with murder may be acquitted (found innocent), but convicted of manslaughter.

Special Offences

The Criminal Code and other federal statutes list literally hundreds of crimes. It would, of course, be impossible to describe them all here. However, it is felt that the ones included will be of some interest to the student. The crimes we will look at can be arranged in three broad groups:

- (1) offences against public order and the good of the state;
- (2) offences against the individual; and
- (3) offences against property.

Offences Against Public Order and the State

In actual fact, all crimes are offences against the well-being of the State. For example, if Long is robbed by Short, the immediate victim is Long, but society in general is also involved because the right of people to live peacefully and own property is threatened. In some offences, however, the danger to the whole of society is obvious because the offender confronts the whole community. Some of the more prominent crimes of this type are dealt with here. In some instances specific sections of the Criminal Code will be quoted to describe the offence.

Treason

This is considered to be the most serious crime a person can commit. The Criminal Code defines treason as follows:

Section 46.

- (1) Everyone commits treason who, in Canada
 - (a) kills or attempts to kill Her Majesty, or does her any bodily harm tending to death or destruction, maims or wounds her, or imprisons or restrains her;
 - (b) levies war against Canada or does any act preparatory thereto;
 - (c) assists an enemy at war with Canada, or any armed forces against whom Canadian Forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are;
 - (d) uses force or violence for the purpose of overthrowing the government of Canada or a province;
 - (e) without lawful authority, communicates or makes available to an agent of a state other than Canada, military or scientific information or any sketch, plan, model, article, note or document of a military or scientific character that the person knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada;
 - (f) conspires with any person to do anything mentioned in paragraphs (a) to (d).

- (g) forms an intention to do anything mentioned in paragraphs (a) to (d) and manifests that intention by an overt act; or
 - (h) conspires with any person to do anything mentioned in paragraph (e) or forms an intention to do anything mentioned in paragraph (e) and manifests that intention by an overt act.
- (2) Notwithstanding subsection (1), a Canadian citizen or a person who owes allegiance to Her Majesty commits treason if, while in or out of Canada, does anything mentioned in subsection (1).

Everyone who commits treason is guilty of an indictable offence and is liable to imprisonment for life (the person must serve at least twenty-five years before becoming eligible for parole).

Sedition

Sedition consists of advocating the use of unauthorized force (an armed rebellion) as a means of overthrowing the present government within Canada. This crime is punishable by a prison term of up to fourteen years.

Unlawful Assemblies and Riots

An unlawful assembly is a gathering of three or more persons whose conduct causes persons in the vicinity to fear that there will be a tumultuous disturbance of the peace. A riot occurs when the unlawful assembly has actually begun to disturb the peace tumultuously, and its participants can be imprisoned for up to two years. Tumultuously means full of commotion, disorder or turbulence.

If a riot develops into an unlawful gathering of twelve or more persons, a mayor or sheriff may call upon them, in the name of the Queen and in a form prescribed in the Criminal Code, to disperse. This proclamation is called "reading the Riot Act" and is described in Section 68 of the Criminal Code as follows:

Section 68. A justice, mayor or sheriff or the lawful deputy of a mayor or sheriff who receives notice that, at any place within their jurisdiction, twelve or more persons are unlawfully and riotously assembled together, shall go to that place and, after approaching as near as safely to do so, and if is satisfied that a riot is in progress, shall command silence and thereupon make or cause to be made in a loud voice a proclamation in the following words or to the like effect:

Her Majesty the Queen charges and commands all persons being assembled immediately to disperse and peaceably to depart to their habitations or to their lawful business upon the pain of being guilty of an offence for which, upon conviction, they may be sentenced to imprisonment for life. GOD SAVE THE QUEEN.

Section 69. Everyone is guilty of an indictable offence and is liable to imprisonment for life who

- (a) opposes, hinders or abducts, wilfully and with force, a person who begins to make or is about to begin to make or is making the proclamation referred to in section 68 so to that it is not made,
- (b) does not peaceably disperse and depart from a place where the proclamation referred to in section 68 is made within thirty minutes after it is made, or
- (c) does not depart from a place within thirty minutes when having reasonable ground to believe that the proclamation referred to in section 68 would have been made in that place if some person had not opposed, hindered or assaulted, wilfully and with force, a person who would have made it.

Perjury and Corruption

Perjury is committed by a witness in a judicial proceeding who lies while under oath to tell the truth. The corruption of a witness takes place if the witness has been influenced to give false evidence or to withhold evidence. It is also corruption to influence jurors in the conduct of their duty. In such cases both the witness and juror are considered to be as guilty as the corrupter.

Causing a Disturbance

The Criminal Code defines disturbing the peace as follows:

Everyone who

- (a) not being in a dwelling-house causes a disturbance in or near a public place,
 - (i) by fighting, screaming, shouting, singing or using insulting or obscene language,
 - (ii) by being drunk, or
 - (iii) by impeding or molesting other persons,
- (b) openly exposes or exhibits an indecent exhibition in a public place,
- (c) loiters in a public place and in any way obstructs persons who are there, or
- (d) disturbs the peace and quiet of the occupants of a dwelling house by discharging firearms or by other disorderly conduct in a public place or who, not being an occupant of a dwelling-house comprised in a particular building or structure, disturbs the peace and quiet of the occupants of a dwelling-house comprised in the building or structure by discharging firearms or by other disorderly conduct in any part of a building or structure to which, at the time of such conduct, the occupants of two or more dwelling-houses comprised in the building or structure have access as of right or by invitation, express or implied,

is guilty of an offence punishable on summary conviction.

Public Mischief

This is the crime of deliberately misleading public officials by such things as laying false charges against people, or falsely reporting such things as fires, crimes, bombs, etc.

Common Nuisances

Common nuisances are committed by endangering the lives, safety and comfort of the public, or by obstructing the public in the exercise and enjoyment of its rights by committing an unlawful act or failing to discharge a legal duty. An example of this would be a factory releasing smoke and chemicals into the air or water causing pollution.

Obstructing a Police Officer

Section 118 of the Criminal Code states:

Everyone who

- (a) resists or wilfully obstructs a public officer or peace officer in the execution of the officer's duty or any person lawfully acting in aid of such an officer.
- (b) omits, without reasonable excuse, to assist a public officer or peace officer in the execution of the officer's duty in arresting a person or in preserving the peace, after having reasonable notice of being required to do so, or
- (c) resists or wilfully obstructs any person in the lawful execution of a process against lands or goods or in making a lawful distress or seizure,

is guilty of

- (d) an indictable offence and is liable to imprisonment for two years, or
- (e) an offence punishable on summary conviction.

By way of illustrating the above mentioned section of the Criminal Code concerning coming to the aid of a peace officer, consider the following case which was decided in Alberta.

The accused was charged with failing to assist a peace officer. The accused's son violently resisted arrest and the officer requested assistance from the accused who was standing close by. The accused told his son to go with the officer and then walked away. The accused was convicted, the court stating that "assist" within the context of section 118(b) of the Criminal Code means both verbal and physical assistance, and if verbal assistance is not successful, then physical assistance must be offered. The court further declared that, "It could not possibly have been the intention of Parliament that a person, seeing a peace officer been assaulted, can simply say to the attacker, 'stop it', and then blissfully walk away after being asked for help by the officer, leaving him to the tender mercies of the attacker."

Note that in the foregoing section, peace officer and, public officer include anyone charged with the enforcement of the law, such as police officers, prison guards, sheriffs and court officers, customs and immigration officials, game wardens, etc.

Vagrancy

In Canada we no longer have the type of vagrancy laws which allow police to stop people and question them as to their means of support and place of residence. Formerly, the law gave the police the right to stop and question any suspicious-looking character. Vagrancy was a summary offence under the Criminal Code and included the charge of wandering or trespassing with no apparent means of support and failing to justify one's presence to a police officer when requested to do so. There was no right to remain silent because failure to provide an explanation could be used as evidence. This was one of the common means for stopping suspicious persons in public places. Now that this statute no longer exists, greater use is made of the drugs, weapons, and liquor laws. These laws are sufficiently vague to allow police officers to stop people and search them on a "reasonable" assumption that they might be carrying illegal drugs, weapons, or alcohol. In municipalities where a curfew takes effect during the late evening hours for young people, this has become a common reason for police to stop and question youths. Also, police may stop and question someone on the claim that they are investigating a disturbance. The charge of causing a disturbance can be interpreted very widely in order to cover any number of situations.

Drug Related Offences

The scope of the problems involved in the control of drugs was considered too extensive for the Criminal Code, so two other federal statutes were used. Those substances which are considered to be addictive are strictly regulated by the Narcotics Control Act. Other substances which are considered to be dangerous if used unwisely or in excess are regulated by the Food and Drugs Act.

The Narcotic Control Act sets out a list of substances, both natural and artificial, which are declared to be narcotics. Possession of or trafficking in these narcotics without lawful authority, such as a doctor's prescription, is illegal. The most commonly known of these substances are opium, codeine, morphine, cocaine, marijuana, hashish and methodols.

Actual personal possession consists of:

- (a) knowledge of what the substance is, **and**
- (b) possession of the drug on one's person **or** storage of the drug in some place for one's use or the use of another person **and**
- (c) consenting to this possession.

Even where a person doesn't have actual possession as defined above, an individual may be convicted of joint or common possession. When one of two or more persons has actual possession, with the knowledge and consent of the others, it is deemed that all of them have possession. However, it is thought that the other persons must have some element of control over the drug or the situation, so that merely agreeing to another's possession of it is not an offense.

Trafficking in narcotics means to manufacture, sell, give, administer, transport, send, deliver or distribute, or offer to do any of these things. The maximum penalty for trafficking is imprisonment for life. Once the Crown has proved possession of a narcotic, the accused must show his purpose was something other than trafficking. The purpose can be ascertained from the quantity of the narcotic, the circumstances surrounding the arrest, what the accused and any witnesses may say, etc.

Provision is also made in the Narcotic Control Act for those who would import narcotics into Canada or who would grow their own. The Act states:

- Section 5: (1) Except as authorized by this Act or the regulations, no person shall import into Canada or export from Canada any narcotic.
- (2) Every person who violates subsection (1) is guilty of an indictable offence and is liable to imprisonment for life but not less than seven years.
- Section 6: (1) No person shall cultivate opium poppy or marijuana except under authority of an in accordance with a licence issued to the person under the regulations.
- (2) Every person who violates subsection (1) is guilty of an indictable offence and is liable to imprisonment for seven years.
- (3) The Minister of National Health and Welfare may cause to be destroyed any growing plant of opium poppy or marijuana cultivated otherwise than under authority of and in accordance with a licence issued under the regulations.

The Food and Drugs Act defines two classes of drugs, controlled and restricted. The controlled drugs include the benzedrines, barbituates, "speed," and other amphetamines or mood-changing drugs. It is not an offence to possess these controlled drugs, however, trafficking in them is an offence which is liable on summary conviction to imprisonment for eighteen months or on conviction an indictment to imprisonment for ten years.

The restricted drugs are those such as LSD (acid), STP, and MDA. Unauthorized possession of a restricted drug is an offence with the offender being liable on summary conviction to a fine or six months imprisonment or both. The same offence on indictment causes the offender to be liable to a fine or imprisonment for three years or both. Trafficking or possession for the purpose of trafficking in a restricted drug is punishable on summary conviction by eighteen months' imprisonment or on indictment to ten years in prison.

The powers of search and seizure available to police in connection with drug offences are extremely wide. While in certain circumstances it may be wise to assert one's rights, it should be remembered that charges of assaulting a police officer, obstructing a police officer, and interfering with a police officer are serious charges and may result from an act of resistance.

For the police to search a person's residence, a warrant must be issued to a particular officer and the warrant must clearly state the date (the power given to search the dwelling lasts only 24 hours) and the correct address. To avoid delays in acting promptly on tips the police receive concerning the possible whereabouts of illegal drugs, amendments to the Criminal Code now allow officers to obtain judicial authorization to enter private residences over the telephone.

Under the Narcotic Control Act, a police officer may enter, at any time, without a warrant and search any place other than a dwelling house, search any person found in such a place, and seize any narcotic found in such a place (or anything in such place in which the officer reasonably suspects a narcotic is contained or any other thing in respect of which the officer reasonably believes an offence under the Narcotic Control Act has been committed). All that is required is a reasonable belief that drugs will be found. "Place" as it is used in this context has a wide definition and may include anything from a garage or a barn to a car or a school locker.

Alcohol Offences

Because the provinces have control over the consumption of alcohol, the Criminal Code (a federal statute), has little to say in regards to this matter. However, the problem of drunkenness, as distinct from controls on the sale and consumption of alcohol, is one that the Criminal Code does deal with. Individuals commit no offence if they go to a tavern or bar, get drunk, and return quietly home. A person also commits no offence by staying at home and getting drunk. The Criminal Code does make some exceptions, however, for those who cannot get drunk quietly and keep to themselves.

Section 168. (1) Everyone who, in the home of a child participates in adultery or sexual immorality or indulges in habitual drunkenness or any other form of vice, and thereby endangers the morals of the child or renders the home an unfit place for the child to be in, is guilty of an indictable offence and is liable to imprisonment for two years.

Section 171. Everyone who

- (a) not being in a dwelling house causes a disturbance in or near a public place,
 - (i) by fighting, screaming, shouting, swearing, singing or using insulting or obscene language,
 - (ii) by being drunk, or
 - (iii) by molesting other persons; ...

is guilty of an offence punishable on summary conviction.

Under Section 87 of the Alberta Liquor Control Act, it is not necessary for a charge to be laid if you are found intoxicated in a public place. You may be charged; you may be detained in custody up to 24 hours without charge (that is you may be kept in jail until you are dried out without being charged); or you may be released without charge to a responsible person.

In Alberta, it is against the law to serve or consume liquor in a public place without a permit or a license. Liquor includes beer, wine, liqueurs and hard liquor like whiskey, rum, gin and vodka. Public places are considered to include such locations as restaurants, hotels, theatres, stadiums, racetracks, aircraft, buses, community halls, parks and campgrounds. The Liquor Control Act makes it necessary for a person to obtain a permit or a license should he wish to possess, serve, or consume liquor anywhere except at home, a hotel room, a recreation vehicle or a summer cottage.

A permit must be obtained to serve or consume liquor in a public place on a single day. To serve liquor regularly, as in a tavern or bar, a liquor license is required.

A permit is intended to provide liquor service at a private function such as a wedding, an anniversary or a meeting of a private club or association when the general public is not invited. A permit cannot be obtained should a function be planned where the general public is invited, such as a teen dance, a bingo or a rally. Liquor is not allowed at such events.

Liquor licenses are intended to allow for liquor service on a daily basis, except perhaps Sundays at certain types of structures or facilities listed in the Liquor Control Act. Such places include restaurants, taverns, nightclubs, lounges, tourist buses, racetracks, trains, aircraft, theatres offering live performances, registered non-profit clubs, stadiums offering professional games and certain recreational facilities.

Football, hockey and baseball are acceptable games at stadiums, while boxing, wrestling and rock concerts are not. Health clubs, ski resorts, golf and curling rinks are acceptable recreation facilities; go-carts, snow machine tracks, video arcades and pool halls are not.

Persons under 18 years of age are not permitted to consume liquor in a public place. They are permitted to enter licensed facilities where food is served, such as restaurants and stadiums, but are not permitted to enter licensed premises where liquor consumption receives primary emphasis such as bars, taverns, and nightclubs.

Persons wishing to hold an occasional private function of a social non-profit nature can apply for an ordinary permit at a local ALCB store. Under this permit liquor can only be provided to invited guests free of charge. Resale permits are available from ALCB stores to genuine non-profit clubs and organizations have social evenings for their members and private guests. At these functions liquor can be sold at prices set by the ALCB intended to cover only the cost of purchasing, serving and transporting the liquor and not providing any kind of profit for the organizers. Any advertising for such functions must be directed solely towards those members of the group for which the function is being organized. The person in charge is held responsible for the safety of his guests and the supervision of the function.

Gambling

Not all forms of gambling are illegal; and others, while being illegal, the participants are seldom prosecuted.

Legal gambling includes:

- (1) Private bets and wagers - it is perfectly legal for two people to bet between themselves on a hockey or football game or any event they choose. This is considered to be a private affair and does not injure society. However, if the loser refuses to pay, the court will not help the winner to collect.
- (2) Permitted lotteries - the federal and provincial governments have the authority to license or conduct their own lottery schemes. Also, a charitable organization may hold a lottery if it first acquires a license from its local municipality.
- (3) Licensed racetracks - betting at a racetrack licensed by the provincial government is lawful. Any other "bookie" places are illegal. The Supreme Court of Canada has held that a business that takes bets to the racetrack for betters is not illegal, provided the business is not itself making the bet with the customer.

Illegal gambling includes:

- (1) Lotteries - a lottery is a method of determining a winner just by random selection. Such things as the Irish Sweepstakes or pools formed to bet on sporting events are all illegal and conducting them is an indictable offence punishable by two years imprisonment.
- (2) Table games - games played on tables using wheels, dice, cards, machines, and other devices are illegal in Canada. Anyone who operates an establishment offering such games may be punished on summary conviction. If these games are played for fun, and not for money, no offence is committed. Games of chance for money are sometimes permitted by special license at fairs and exhibitions.
- (3) Slot machines - this device is a machine with rotating wheels with pictures on them. The wheels revolve independently, and if by chance the same pictures come up together, a pay-off occurs. Coins are dropped in at the top, then you pull a handle which turns the wheels, and you either win or lose, depending upon which pictures come up. The chief problem with such machines is that they can be rigged so as to never pay off, or pay off very rarely.

Canadian law prohibiting certain forms of gambling are intended to discourage gambling run by organized crime, while still allowing such things as bingo games and lotteries to be run by various groups for useful purposes, such as building funds and charitable organizations.

Sexual Offences

In regards to sexual offences, the criminal law may be concerned with the protection of the individual or it may be more concerned with maintaining the moral standards of society.

A husband and wife, or two people over 18 years of age, may perform any sexual act in private if both consent. Such an act is not considered to be private if more than two persons are present or take part, or if it is conducted in a public place. If one or both persons are under 18, both may be charged. If the act occurs in the presence of others, anyone who is involved may be charged. The probable charge will be gross indecency, an indictable offence carrying a maximum penalty of five years imprisonment. If both parties are over 18, and both consent, homosexual or lesbian sex in private is legal. Again, if one or both persons are under 18, or if others are present, both participants may be charged with gross indecency.

Prostitution

Prostitution refers to the selling of the services of oneself or another for the purpose of sexual intercourse. It is illegal to solicit a person in a public place for the purpose of prostitution. This is a summary offence punishable by six months in jail or a \$500 fine or both. The fact that a woman or man is a prostitute is not in itself illegal. What is illegal is the soliciting for their service.

Pornography

We have left it to the court to decide for us whether something is obscene or if it has artistic or literary merit. This is no easy job as standards will vary from place to place and with the changing times. In general terms, the Criminal Code makes it a crime to distribute or to make obscene material. It gives little help as to what is actually obscene as it merely states:

Any publication, a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty, and violence, shall be deemed to be obscene.

It is left to the courts to decide what is "undue exploitation."

Nudity

Being nude in a public place, or being nude and exposed to public view is an offence punishable on summary conviction. Striking would fall under this category. The maximum sentence is six months or a fine, or both.

Organized Crime

Organized crime derives most of its illegal income from two types of activity, namely racketeering and syndicated crime.

Racketeering is a type of blackmail in which the operator of a business is forced to pay money every week or month so that the person's business and life are protected. Racketeering also includes such activities as blackmail, arson, extortion and intimidation.

Syndicated crime consists of providing illegal services and goods to the general public. Gambling, loansharking and narcotics are examples of syndicated crime.

(1) Gambling

Illegal gambling operations are the main sources of revenue for organized crime in North America. Approximately \$20 billion a year are bet on illegal lotteries (often referred to as the numbers operations), bookmaking (bets made on horse races through an agent called a "bookie"), and sports events (some of which may be fixed by organized crime to bring a bigger return).

(2) Loansharking

Loansharking or shylocking occurs when a person, not authorized by law to lend out money, charges an excessive interest rate on a loan. All legal lending institutions in Canada are authorized by law and their rates of interest are controlled. Loansharks are people in the employ of organized crime who lend out money at exorbitant rates of interest to people or businesses who cannot obtain money from a recognized lending institution. Sometimes the loanshark will resort to extortion if the borrower fails to pay back the money owed by an agreed date.

If a debtor is unable to pay back the money owed, loansharks have been known to follow illegal alternatives. If the debtor owns a business, the loanshark may take a percentage of ownership in the business and write off the debt, or the loanshark might find the debtor a job and take a percentage of wages until the debt is repaid. The loanshark may threaten the debtor to the point where the debtor is panicked into committing a crime in order to pay back the debt. Finally, the loanshark may turn the matter over to "enforcers" who will use varying degrees of violence to persuade the debtor to pay back the money owed. Violence however, is used sparingly by organized crime, usually only to create fear. Debtors are rarely killed, except to set an example for others who have not paid.

(3) Narcotics

Revenues from the illegal sale of narcotics in North America bring organized crime an estimated \$500 million a year. Heroin is the drug that brings in the largest amount of money and is purchased by heroin addicts who finance their drug habit from various criminal activities. It is not uncommon to hear of some heroin addicts who will spend \$200 or \$300 a day on their addiction. To support this expensive habit they must invariably turn to crime to obtain the funds they need.

(4) Other Activities

The number of rackets and operations under the direct or indirect control of organized crime is endless. Wherever there is an opportunity to make money, organized crime will take advantage of it. One of the known illegal operations is labor racketeering. Organized crime has taken over some labor unions and blackmails the owners of some industries and businesses to ensure labor peace. Eventually the company gives in to the underworld's demands, but the price the company pays to the underworld for labor peace is passed on to the consumer in the form of higher prices.

Hijacking trucks loaded with various goods and selling these stolen goods to "fences" (people who can resell them) is another activity that adds to the growing revenues of organized crime.

Bankruptcies are also profitable for the underworld. Its members purchase certain companies that buy a great deal of merchandise on credit and then sell it to other companies at cut rates. The company then declares bankruptcy, leaving the legitimate businesses with no one from whom they can collect. These losses are passed on to the public.

Pornographic material and prostitution, as well as forgery and bribery, are also sources of income for organized crime.

Firearms and Offensive Weapons

The federal government has taken a very dim view of individual citizens arming themselves, except for the purpose of hunting game. No one has the right to keep a weapon for the express purpose of self-defence. The Criminal Code permits police to search, without a warrant, any person, vehicle or place - except a dwelling - where it is believed illegal weapons may be found. With a search warrant police can enter a private residence and seize any weapons if they have reasonable grounds to suspect that the weapons are a danger to others. If, for example, the home of a known criminal, a mentally unstable or potentially dangerous person is being legally searched, the police would have the right to seize any weapon found on the premises if, in their opinion, there is any chance that the weapon could be used in a harmful manner. The police are therefore able to seize a weapon in an imminently threatening situation, for example, in the case of domestic quarrels, which account for approximately one-third of all murders in Canada.

Some weapons are illegal and may not be possessed by anyone. These are classed by the Criminal Code as prohibited weapons and include any device to silence a firearm or a knife that opens by spring action, such as a switch blade. Other weapons are not illegal, but strict controls are exercised over them. The Criminal Code defines a restricted weapon as follows:

Section 82. "restricted weapon" means

- (a) any firearm designed, altered or intended to be aimed and fired by the action of one hand,

- (b) any firearm that is capable of firing bullets in rapid succession during one press of the trigger.
- (c) any firearm that is less than sixty-six centimeters (26 in.) in length or that is designed or adapted to be fired when reduced to a length of less than sixty-six centimeters (26 in.) by folding, telescoping or otherwise, or
- (d) a weapon of any kind, not being a shotgun or rifle of a kind commonly used in Canada for hunting or sporting purposes, that is declared by order of the Governor-General-in-Council to be a restricted weapon.

Firearm means any barrelled weapon from which any shot, bullet or other missile can be discharged and that is capable of causing serious bodily injury or death to the person, and includes anything that can be adapted for use as a firearm.

The registration of all guns in Canada appears neither feasible nor likely to be effective. Rather, the Government feels it important to ensure that those people who continue to possess or acquire firearms and ammunition are fit to do so. To that end, every person in possession of any firearm or ammunition, requires a license. The license is valid for five years, and issued only if the licensing officer is satisfied that applicants have nothing in their background that would render them unfit to possess a firearms' license.

Further, applicants are required to submit the statements of two guarantors who have known them for more than two years, to the effect that they too know of nothing that would render the applicant unfit to possess a firearms license. Fees collected from licensees are set at a level sufficient to cover the cost of this system.

Persons under the age of eighteen who wish to use firearms require special permits, to which strict conditions are attached. Such a permit will be issued only for target practice, game hunting or instruction in the use of firearms and the application must be signed by two guarantors, one of whom must be a parent or closely related person.

Special provisions are made to allow permits to persons under eighteen years of age who need to possess a firearm to provide food for their families in areas where hunting and trapping are a way of life. Such permits may be issued without a fee being charged so as not to impose a financial hardship on such persons.

All firearms and ammunition dealers (both wholesale and retail), importers and manufacturers must have permits. They must also keep records of every transaction involving firearms or ammunition. These records are inspected regularly.

Not only is it important to screen those who are to possess firearms and ammunition, they must keep and use those firearms in a responsible fashion. Careless handling and storage of firearms may make a gun owner liable to a criminal offence, carrying a penalty of up to five years imprisonment.

Hunting and Fishing Regulations

Although control over hunting, fishing and other sporting activities are placed constitutionally within provincial powers, the federal government was authorized to act in interprovincial and international areas. With the federal development of national parks (Banff was the first such area, and it was set aside in 1887), protected game ranges were marked off. The provinces followed with the creation of provincial parks, which greatly increased wilderness sanctuary for animals — although some controlled hunting is permitted in these parks. There are also a few private game refuges.

Federal and provincial wildlife officials meet annually to study new problems and coordinate regulatory action. The Royal Canadian Mounted Police play a key role in the enforcement of some game laws, and the provinces have special staffs of wardens and field officers to enforce provincial regulations. The angler or hunter eager to enter the wilds with rod or gun must first be familiar with the latest regulations. The law is generally similar across the country but variations definitely exist. Depending on resource-management decisions, there are closed seasons in certain districts and open seasons in others. Normally, hunting and fishing for certain species is limited to periods between specified dates. Licenses are usually required and regulations on what hunting or fishing equipment can be used, as well as limits on the amounts of game killed or fish caught, are strictly enforced. To avoid trouble, individuals should always obtain copies of the current regulations from provincial authorities, tourist information offices, hunting lodges or sporting goods stores. They are usually not published until shortly before the season opens. Ignorance of the law is no excuse and fines can be large and include the seizure of hunting equipment, cars, boats and aircraft.

In addition to the many restrictions set out in legislation, the wise hunter also obeys certain unwritten laws. In practical terms, it is advisable to wear conspicuous clothes even when it is not demanded by regulation. All too often inexperienced and excited hunters will shoot at any movement where they are expected game to be.

Guns should be carried with safety locks on, and hunters should never walk in single file. Care must be taken to pass, not carry, guns over obstacles such as fences. Set or spring guns and automatics are banned. Guns must not be fired across highways. When you have finished shooting, you should unload, if not dismantle, your gun. Ammunition should be stored separately from the guns and beyond the reach of young children. Only shells and bullets of the proper size and weight for the weapon being used should be fired.

The universal distress signal of hunters is three rapid shots fired in the air and answerable by a single shot. Horseplay or practical joking have no place in the hunting field, and any hunter who drinks liquor before shooting shows a reckless disregard for the safety of others. The responsible sports enthusiast willingly observes regulations applying to forests and rivers, and also respects farm crops and the rights of property owners.

License Regulations and Limits

The government of the province has control over wildlife within its borders, except for the jurisdiction of the federal government over migratory birds and over all wildlife in the national parks. The majority of our hunting regulations are therefore issued under provincial legislation. These regulations cover the requirement of licenses and the collection of fees. They also establish compulsory safety programs. Hunting methods and permitted types of firearms are specified, and the use of aircraft, snares and traps is strictly controlled. In some areas, licensed guides must be hired. The regulations dictate the seasons in which animals, birds or fish may be hunted, or caught, as well as the numbers of each type that may be taken per day, and per hunting or fishing trip. They also cover the conditions under which game and fish may be sold, propagated - that is, increased in number, as in fish hatcheries - or exported. Minimum age restrictions of hunters are also set out. Since the hunting regulations are frequently changed, the prospective hunter must take steps to become aware of the current law. The information given here should be taken as a general guide only.

Licenses for provincial residents are less expensive than those issued to non-residents; if the non-resident is not a Canadian citizen, the licenses are even more expensive.

Indians and Eskimos are allowed to hunt without a license for migratory birds, as well as other species, for food and clothing. They must have a special permit, however, for hunting in migratory bird sanctuaries. In general, there is a right reserved to them to hunt for food on unoccupied Crown land, unless the game in question has been declared to be in danger of becoming extinct.

Special licenses are available to Alberta residents only for hunting non-trophy mountain sheep, Camp Wainwright deer, goat, antelope and elk in designated areas of the province. A wildlife certificate is also required in addition to game and game-bird licenses. Bow-and-arrow enthusiasts require an archery license, whether resident or non-resident. The non-resident requires an export permit to take out trophy mountain sheep, grizzly bear, caribou and cougar.

Hunting seasons and game-possession limits - that is, how many you can have in your possession in one hunting excursion - vary not only from province to province, but often within a province from zone to zone. Changes are made in the regulations nearly every year. They take into account the most up-to-date information about various species, especially their numbers.

Protected Areas

In all of Canada's national parks hunting is strictly prohibited; this means total protection for all species of game in the parks. In the provincial parks, there are regulations regarding permitted hunting seasons, license requirements and daily limits. Strict regulations are in force on game preserves and in fish sanctuaries, ranging from total prohibition to set limits on game killed and fish caught in defined seasons. Apart from designated locations, animals in open areas are protected by the regulations issued under the terms of the provincial fish and game acts.

Migratory Birds Convention

The Canadian parliament passed the Migratory Birds Convention Act in 1917, putting into effect the terms of the Migratory Birds Treaty which had been negotiated with the United States the previous year. The provincial fish and game acts generally confirm the provisions of the convention and often include extra protection for certain birds of more local interest that were not mentioned in the federal act. Regulations proclaimed under the authority of the Act are revised seasonally. The convention protects three groups of birds:

- (1) migratory game birds (e.g. ducks, geese and pigeons)
- (2) migratory insect-eating birds (e.g. chickadees, orioles, warblers and woodpeckers)
- (3) migratory non-game birds (e.g. gulls, herons and terns).

It is an offence at any time of the year to hunt, capture or kill migratory insect eating birds or migratory non-game birds. Subject to certain conditions of the license, season and zone, it is legal to hunt migratory birds.

The hunter must get a federal game bird permit available at post offices, in addition to a provincial hunting permit. Migratory game birds, mainly ducks and geese, may be hunted only during the legal period of days commencing a half hour before sunrise and ending a half hour after sunset and only during the season specified. You may not hunt them within one-quarter mile of a baited area. Nor may you use live birds and recorded bird calls as decoys. Except in the Northwest Territories, rifles are prohibited; the only weapons permitted are the bow and arrow or shotgun not larger than 10 gauge. Birds cannot be hunted from aircraft, sailboats, powerboats or other motorized vehicles. However, you may use a boat for retrieving, and for hunting as long as it isn't in motion. You are allowed to hunt with only one shotgun at any one time; any others must be kept unloaded and cased.

If migratory birds are causing damage to crops or property, they may be scared away with any noise-making equipment other than firearms. Firearms may be used to scare off birds which are causing damage, but only under the authority of a special permit issued by the chief game officer of the province.

Pollution is not dealt with specifically under the Migratory Birds Convention Act, although it is the subject of numerous other federal and provincial statutes. The act does, however, prohibit the deposit of oil, oil waste or any other substances harmful to migratory birds in any waters or areas frequented by birds.

Cruelty to Animals

Under the Criminal Code of Canada, it is a crime to deliberately cause unnecessary pain, suffering, or injury to an animal or bird. If an animal is found to have been caused pain or suffering because some person failed to exercise reasonable care or supervision of it, this, in the absence of contrary evidence, is considered sufficient proof that the pain or suffering was caused wilfully. The punishment for a conviction in such an instance is a fine, six months imprisonment, or both. If convicted a second time, an offender may be prohibited by the court from owning an animal for a stated period of time.

In all provinces, the Canadian Society for the Prevention of Cruelty to Animals (C.S.P.C.A.) is backed up by legislation in its work. The most common cruelty is neglect of pet cats and dogs or animals usually kept in stables. The society's inspectors have authority to enter any building, on the strength of a warrant, to see whether there is any animal inside in distress. To get the warrant, inspectors must swear that they have reasonable grounds for believing that distress exists. If the inspector actually sees a suffering animal, no warrant is required. Distress is defined as the state of being in need of proper care, sick or in pain or suffering or being abused or subject to undue or unnecessary hardship, privation or neglect. The S.P.C.A. inspector may order food, care and treatment for any distressed animal, and may also order the owner to have the animal examined by a veterinarian at the owner's expense. If the owner refuses to comply, the society may take possession of the animal and provide it with food, care or treatment. This will also be done at the expense of the owner. Should the owner refuse to pay these costs, the society has the authority to sell an animal and pay the bills from the proceeds. The society also maintains facilities where unwanted pets will be destroyed humanely, and without charge.

Shooting from Vehicles

Hunting from an aircraft or transporting a loaded gun in an aircraft, whether it is in motion or not, is prohibited. The same prohibition extends generally to all vehicles, and to powerboats while they are in motion. The federal Migratory Birds Regulations states that hunters may use a powerboat for retrieval, but not while they are in possession of a loaded firearm, nor if they must travel more than 200 metres from where they were when the bird was shot. This is meant to discourage hunters from firing from too great a distance.

The popularity of the snowmobile as a means of travel has brought it into the scope of the law. It is considered a motorized vehicle; thus, hunting from snowmobiles is prohibited. You are also committing an offense if you use your snowmobile to chase, molest, injure or kill any wildlife.

Traps and Poisons

Poisons are strictly prohibited in the taking of game animals or birds. Under the Criminal Code, it is also an offence to poison an animal or bird wild by nature that is being kept in captivity. Such an offence is punishable on summary conviction. Traps and snares are generally prohibited to sport hunters, although they may be used for certain species in designated seasons. Big game (except bear, under a special license) may not be trapped.

Those who trap for a living are regulated by a special license under different provincial regulations. Trapline areas are set out in the license and the trapper has exclusive rights to the area described in the license. Quotas are set for the different fur-bearing animals which the trapper must not exceed. When the license expires, the trapper must make a statement of returns stating the number of pelts obtained of each species and a report on what happened to them.

The trapping of fur-bearing animals is totally restricted to licensed residents, and it is unlawful to touch or interfere with any set trap unless authorized by law, or the owner, to do so. The common fur-bearers are beaver, fisher, lynx, otter, muskrat, wolverine, weasel and mink.

Forest-Travel Permits

The preservation of timberlands both as a wildlife habitat and a harvestable resource is of great concern to conservationists and governments. As an aid in preventing loss of forest, as well as animal and human life, there are laws restricting both forest travel and the setting of fires in designated areas. Areas where timberland is predominant are designated as "fire districts;" within these, there are certain areas that are labeled "restricted fire zones" and "restricted travel zones". Travel in a restricted travel zone during the fire season is prohibited, except under authority of a forest-travel permit issued by a fire warden. These restrictions do not apply, however, to travel on public roads or within cities, towns and villages, supervised campgrounds or on water adjacent to any of these.

Smoking is prohibited while walking in these forests where travel is restricted.

Persons who enter the forest without a permit when one is required are guilty of an offence punishable by either fine or imprisonment. Furthermore, such persons may be held responsible for expenses incurred in controlling or extinguishing any fire caused by their negligence.

Private Property and the Hunter

Every year, more and more farmers and other persons owning lands suitable for hunting put up notices forbidding hunters to come on their land. When lands have been posted by the owner, hunters must not enter the property nor may they deface notices that have been posted. Even without posted notices, groups of more than 12 hunters must have a landowner's permission to hunt, whether the land is fenced in or not. If a landowner asks you to leave, you must do so immediately.

A landowner does not have to prove damage to sue an intentional trespasser; if there is no damage, the owner will be awarded only a nominal amount. Intentional trespassers can, however, be held responsible for all damage caused by their presence on the land. To be guilty of trespassing, a hunter need not actually set foot upon a property but need only fire a bullet that reaches private property. As well as charging a person with trespassing, a landowner may obtain a court order which prevents continued acts of trespass.

Fishing Regulations

Fishing, unlike hunting, can be enjoyed 24 hours a day; however, torches or other artificial lights are prohibited, as are guns and all explosives. Only one fish line is permitted - except when fishing through ice. The line must be baited so as to include not more than four hooks (a gang of three barbs counts as one hook). Spears are prohibited in Alberta, except to underwater divers who may use them under the authority of a special license. In Alberta, ice fishing is prohibited in waters that are frequented by trout, grayling or mountain whitefish. Any line not held by hand must have a marker attached to it. The marker must have the fisher's license number on it and must extend 60 centimeters above the ice, or snow. Where fish huts are used, they must be identified. A date is set by which all huts must be gone from the lakes (usually March 31). This is done to avoid water pollution and boat hazards, as well as to prevent the nuisance of unsightly wreckage being washed ashore.

Almost anywhere in Canada persons may find that their catch bears a tag or a fin clip. This tells them that their fish was probably raised in a hatchery and released in wild waters after having the identifying mark attached. Individuals are asked to forward tags, or details of the clips, to the game authorities in the province. All information concerning the length, weight and condition of the fish, where and when caught, is appreciated. This will help wildlife scientists to check on the movement, growth, abundance and survival of species. This, in turn, affects the regulations that are revised each spring under the fish-and-game laws.

Powers of Wardens

To enforce the hunting, fishing and forest laws, game wardens, conservation officers and fire wardens are given wide-ranging powers. A provincial conservation officer can get a warrant to stop you, or to enter and search premises, cars, boats or aircraft. The warden doesn't need a warrant if there is reasonable grounds to believe an offense has been committed regarding game killed or fish caught. The warden has authority to open and inspect any trunk, box or parcel, may use force if necessary, and may arrest without a warrant.

Information on the number and species of game or fish taken must be given to an officer on request. If it is suspected that you have taken game or fish unlawfully, the officer may seize the game and any property you used in breaking the law. If you are convicted, what was seized goes to the Crown. You could even lose your car or boat. Similar powers are given to wardens appointed under the federal Migratory Birds Convention Act. This authority is extended to provincial game and fishery officers and game-management officers of the territories. They have the right to seize game and any property, vehicle or aircraft used in violation of the Act, as long as they have reasonable grounds for believing that a violation has taken place.

It is an offence to assault, interfere with, or provide false information to a game warden or officer.

Exercise 1

Define the following terms. If you are unsure as to the meaning of any particular word refer to the lesson notes or a dictionary.

1. abetting - _____

2. acquit - _____

3. assize - _____

4. automatism _____

5. conviction - _____

6. compurgator - _____

7. incite - _____

8. indict - _____

9. narcotic - _____

10. overt - _____

11. perjury - _____

12. sedition - _____

Exercise 2

Fill in the blank spaces in the following statements; only one word is required for each space.

1. During Anglo-Saxon times there was no real distinction between civil wrongs and _____.
2. Henry II delegated his judicial functions to full-time _____.
3. It was the _____ jury's duty to decide whether or not a person should be presented for trial.
4. In our legal system the accused is presumed innocent until proven guilty beyond a reasonable _____.
5. Ignorance of the law is no _____.
6. The Criminal Code of Canada was first passed into law in _____.

- 7. The _____ are responsible for the administration of the Criminal Code.
- 8. A person convicted of a criminal offence is sent to a federal prison only if the sentence is _____ years or more.
- 9. In Canada, there are no common law crimes but only those crimes as defined by _____.
- 10. The most important defence to a crime is the absence of a _____ mind.
- 11. Trial by Ordeal was basically an appeal to _____ powers to assist in the decision-making process.
- 12. Crimes of a complex nature require an intentional act coupled with the intent to produce a specific result, this is frequently called _____ intent.
- 13. It is a fundamental principle of our law that a person must be charged with a specific _____.
- 14. An _____ offence is one that is part of the offence charged and is usually a lesser charge.
- 15. In actual fact, all crimes are offences against the well-being of the _____.
- 16. _____ is considered to be the most serious crime a person can commit.
- 17. The _____ of a witness takes place if the witness has been influenced to give false evidence or to withhold evidence.
- 18. Those substances which are considered to be _____ are strictly regulated by the Narcotics Control Act.
- 19. _____ in narcotics means to manufacture, sell, give, administer, transport, send, deliver or distribute, or offer to do any of these things.

20. The Food and Drugs Act defines two classes of drugs, _____ and _____.
21. The provinces have control over the consumption of _____ beverages.
22. In Alberta, persons under _____ years of age are not permitted to consume liquor in public place.
23. No one in Canada has the right to keep a _____ for the express purpose of self-defence.
24. A charitable organization may hold a lottery if it first acquires a _____ from a local municipality.
25. In all of Canada's national parks hunting is strictly _____.
26. _____ and _____ are allowed to hunt without a license for migratory birds.
27. Poisons are strictly _____ in the taking of game animals or birds.

Exercise 3

1. During Anglo-Saxon times there were basically three forms of trial. Name and briefly define them.

(1) _____

(2) _____

(3) _____

2. There are two elements of any crime. Name them and briefly define each one.

(1) _____

(2) _____

3. Why was it felt that criminal law should be codified?

4. State the legal powers provided for in the following sections of the British North America Act.

(a) Section 91(27) - _____

(b) Section 92(14) - _____

(c) Section 92(15) - _____

5. Why is the distinction between principals in the first and second degree, and accessories before the fact, no longer of any importance?

6. Referring to the lesson notes, give **your own** examples of the following sections of the Criminal Code of Canada.

(a) Example of Section 422(a):

(b) Example of Section 23(2):

(c) Example of Section 24(1):

7. Briefly describe the two main categories of crime.

(a)

(b)

8. Since the elimination of the crime of vagrancy from the Criminal Code, upon what law(s) have the police relied to carry out their function of stopping and questioning suspicious persons?

9. What are three forms of legal gambling in Canada?

(a)

(b)

(c)

10. What are three forms of illegal gambling in Canada?

(a)

(b)

(c)

Exercise 4 Case Studies

1. Johnson was murdered by Smith. Shortly after the killing, Smith went to his cousin John and told him what happened. Smith asked John to let him stay at his place for a few days and not to say anything to the police. John consented. Eventually Smith was accused of the murder, tried and convicted. The court further held that the actions of John made him an accessory after the fact.

(a) What did John specifically do that made him an accessory after the fact?

(b) What penalty does the Criminal Code provide for a person convicted of being an accessory after the fact?

2. The police arrest four men who are found sitting in a car near a race track. Each man is found to be in possession of some form of deadly weapon, i.e. revolver, knife, rifle. Each also has a piece of paper on which is drawn the layout of the race track's general offices, the location of the safe and the number of guards and their positions. The trunk of the car is found to contain such things as an acetylene torch, a small amount of dynamite and some blasting caps.

What crimes will these men be charged with? Explain your answer.

3. Morgan was the driver of a get-away car after a bank robbery. On the highway leading from the town a police car started to chase them. Someone in the back seat of the get-away car fired a gun at the police car seriously wounding one of the police officers. Morgan was charged with attempted murder. Do you think such a charge was justified? Explain.

4. A police officer who is "walking the beat," notices a light on in the back of a drug store. Upon further investigation he finds that the front door has been smashed in. He proceeds to enter the drug store but makes a lot of noise stepping on the broken glass. From the back of the store he hears a door open and the sound of running feet. He races to the back, goes through the back door and sees a lone suspect running down the alley. He chases the suspect, but when he reaches the alley entrance he sees the suspect jump into a car and race away. The police officer flags down a passing motorist, jumps in the car, and instructs the motorist to chase the suspect's vehicle. The motorist refuses. Has the motorist committed a criminal offence? Explain your answer.

5. The R.C.M.P. raid Henry's apartment and find 5 kilos of marijuana, fifty packages of cigarette papers, a small scale, and five boxes of small plastic bags. Henry is charged with the possession of a narcotic for the purpose of trafficking. At his trial Henry testifies that he had the marijuana only for his own use. In your opinion is he guilty of possession for the purpose of trafficking? Why or why not?

Exercise 5

Using well-constructed paragraphs, answer the following questions.

Some forms of gambling are legal, others are not. Why not make all forms legal? Explain your answer. (150-200 words)

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LESSON RECORD FORM

3430 Law 30

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Date Lesson Submitted

(If label is missing
or incorrect)

File Number

Time Spent on Lesson

Lesson Number

Student's Questions and Comments

Apply Lesson Label Here

Name

Address

Postal Code

Please verify that preprinted label is for
correct course and lesson.

FOR SCHOOL USE ONLY

Assigned
Teacher: _____

Lesson Grading: _____

Additional Grading
E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

Lesson Recorded _____

Teacher's Comments:

Correspondence Teacher

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

- (1) All pages are numbered and in order, and no paper clips or staples are used.
- (2) All exercises are completed. If not, explain why.
- (3) Your work has been re-read to ensure accuracy in spelling and lesson details.
- (4) The Lesson Record Form is filled out and the correct lesson label is attached.
- (5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do not enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.

Try to mail each lesson as soon as it has been completed.

When you register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

OFFENCES INVOLVING MOTOR VEHICLES

Laws regarding automobiles come, for the most part, under provincial legislation. In Alberta the most significant laws such as speed limits, driver testing and licensing, safety requirements and insurance are covered by the Alberta Highway Traffic Act. Municipalities are also empowered to pass by-laws in regard to vehicle movement. However, the federal government has declared that some forms of conduct in the operation of a motor vehicle are of such a serious and dangerous nature that they are criminal.

When two parties are so moving in relation to one another as to involve risk of collision, each owes to the other a duty to move with care. This is true whether they are both in control of vehicles, or both proceeding on foot, or whether one is on foot and the other is controlling a moving vehicle. The underlying principal of the "rules of the road" is that all must show mutual respect and forbearance.

The driver of a car has a duty to take care not to injure other persons using the highway. The driver must avoid excessive speed, keep a good look-out, and observe traffic rules and signals. A very high standard of skill and care is demanded because a car is a powerful and deadly weapon.

All levels of government - federal, provincial and municipal - have the power to pass and enforce laws which directly affect owners and drivers of motor vehicles. The serious driving offences such as impaired driving, criminal negligence and dangerous driving are crimes and only the federal government can pass such criminal laws. On the other hand, the Constitution Act, 1867, gave the provincial governments the power to pass laws dealing with property, civil rights and matters of a local nature. Therefore the Alberta government has passed many laws regulating the use of highways and motor vehicles in the province. Highway speed limits, having to carry proof of vehicle registration and insurance are examples of provincial laws. This is not all. The province has, in turn, given municipal councils in Alberta the power to pass by-laws for the regulation and control of vehicle, animal and pedestrian traffic within the territorial boundaries of the municipality. The designation of parking zones, crosswalks and truck routes are all examples of by-laws created by a municipality.

These provincial and municipal laws are often called "quasi-criminal" offences because although they are not truly crimes, they are often treated as if they were crimes; government personnel are hired to enforce such laws (R.C.M.P., city police, by-law enforcement officers); cases are often heard in the same court (Criminal Division of the Provincial court); lawyers are hired to present evidence for the government (Crown prosecutors), and correctional personnel or probation officers may be involved after the sentence is delivered. The heavy involvement of government in criminal and quasi-criminal motor vehicle offences cannot be ignored and should alert drivers to the fact that these offences are considered to be wrongs against the state.

The Highway Traffic Act

The Highway Traffic Act covers pedestrians, cyclists, and motor cyclists, as well as motor vehicles.

Any person who drives a motor vehicle for the transportation of persons or property for wages, gain, or reward, or any person who as owner or employee drives a public service vehicle, is classified as a *chauffeur*. Farmers or their employees operating vehicles belonging to the farmer for transporting the farmer's property are not classified as chauffeurs. Neither are drivers of their own commercial vehicles.

Every road, street, lane, alley, driveway, parkway, or other place whether publicly or privately owned, that the public may use for the passage of vehicles is classed as a *highway*. A *roadway* is that part of the highway intended for vehicular traffic. A *traffic lane* is a longitudinal division of a highway divided into a strip wide enough to accommodate a single line of vehicles.

Parking lane means that portion of a highway between a solid yellow line marked on the roadway and the nearest outer edge of the roadway.

The term *motor vehicle* refers to every vehicle propelled by any power, other than muscular power, except aircraft, tractors, tractor engines, and such motor vehicles as run only upon rails or tracks. The term *vehicle* used alone means any kind of vehicle propelled or driven by any type of power including muscular power, except the cars of electric or steam railways running only upon rails.

Bicycle includes any cycle propelled by human power upon which a person may ride, regardless of the number of wheels it may have. *Motorcycle* means a motor vehicle mounted on two or three wheels and includes those motor vehicles known to the trade as motor cycles, scooters and power bicycles.

Municipality means a city, town, village, county, municipal district.

Peace officer means a member of the Royal Canadian Mounted Police, a member of a municipal police force, an inspector of the Inspection Service Branch of the Department of the Attorney General, or a special constable.

Pedestrian means a person on foot or a person in a wheel chair using a public highway for passage.

The *owner* means a person in whose name a vehicle is registered.

Selections from the Highway Traffic Act

(These sections have been chosen because it was considered they would be of interest to the average motorist.)

Requirement of license

3. (1) No person shall drive a motor vehicle on a highway unless the person is the holder of an operator's license authorizing the person to operate a motor vehicle of the type or class being operated by him.

Minimum age

7. (1) An operator's license for a motor vehicle, other than a scooter or a power bicycle, shall not be issued to any person under the age of 16 years.
(2) An operator's license for a scooter or power bicycle shall not be issued to any person under the age of 14 years.
(3) An operator's license shall not be issued to any person under the age of 18 years.
 - (a) unless the application is also signed by a parent or guardian of the applicant, or
 - (b) where the person is self-supporting and is unable to obtain the signature of a parent or guardian, unless the person proves to the satisfaction of the Minister that the person is self-supporting and unable to obtain such consent, or
 - (c) unless the person proves to the satisfaction of the Minister that the person is married.

Learner's license

8. (2) An operator's license of a learner's category shall be stated to entitle and entitles the licensee to drive a motor vehicle of the type specified while the license is accompanied by a person who is at least 18 years of age
 - (a) who holds an operator's license, valid for the operation of the vehicle being used, and
 - (b) who is sitting immediately beside the licensee and engaged in teaching the licensee to drive or engaged in conducting a driver's examination of the licensee.
- (3) An operator's license of a learner's category may be issued for the purpose of operating a motor cycle, scooter or power bicycle under such terms and conditions as may be prescribed by the regulations.

24. (1) Persons driving a motor vehicle shall carry their operator's license with them at all times during which they are in charge of a motor vehicle and shall deliver it for inspection to a peace officer when demanded by any peace officer.
34. (1) Every driver of a motor vehicle shall produce the certificate of the registration of the vehicle upon demand by any peace officer.

Speed

93. Notwithstanding any speed limit prescribed by or pursuant to this or any other Act, no driver shall drive at any rate of speed that is unreasonable having regard to all the circumstances of the case, including
- (a) the nature, condition and use of the highway,
 - (b) the atmospheric, weather or other conditions that might affect the visibility of the driver or the control of the vehicle,
 - (c) the amount of traffic there then is or that might reasonably be expected to be on the highway, and
 - (d) the mechanical condition of the vehicle or any equipment of the vehicle.

Proof of financial responsibility

246. (1) The Minister may require proof of financial responsibility before issue of the registration of a motor vehicle or operator's license.

Repair of damaged vehicle

88. (1) No person shall commence the repairs on a motor vehicle that shows evidence of having been involved in an accident required to be reported or having been struck by a bullet
- (a) unless a notice in the form prescribed by the regulations has been affixed to the motor vehicle by the local police authority, or
 - (b) if no notice is affixed to the motor vehicle, until the person has been authorized in writing by the local police authority to do so.
- (2) Notices as required by section 88(1) of The Highway Traffic Act shall be in the following form:

PROVINCE OF ALBERTA

DAMAGED MOTOR VEHICLE CLEARANCE

The damage indicated hereon has been reported to police as required by law. This damage may not be repaired and sticker must be left on windshield until this is done. Sticker must be removed when damage is repaired.

LEFT

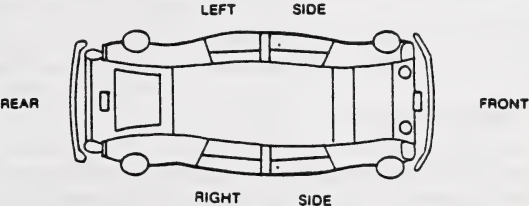
SIDE

REAR

FRONT

RIGHT

SIDE



Serial No. _____

Date _____

Lic. No. _____

Police Dept. _____

Location _____

P.C. _____

(3) Notices pursuant to section 88(1) of the Highway Traffic Act shall not be required where the damage to a motor vehicle consists of a cracked or broken windshield.

Bicycles and motor cycles

163. (1) No person under the age of 16 years shall operate a scooter or power bicycle unless the motor thereof is so adjusted or governed that the vehicle is unable to attain a speed in excess of 50 kilometres an hour.

Operation of cycle

164. (1) A person who is operating a cycle on a highway
- (a) shall keep both hands on the handlebars of the cycle, except when making a signal in accordance with this act,
 - (b) shall keep both feet on the pedals or foot rests of the cycle,
 - (c) shall not ride other than upon or astride a regular seat of the cycle, and
 - (d) shall not use the cycle to carry more persons at one time than the number for which it is designed and equipped.

Riders to cycle single file

166. A person operating a cycle on a highway
- (a) shall not ride to the side of another cycle travelling in the same direction, but
 - (b) shall ride directly in line to the rear or front of the other cycle, except when overtaking and passing the other cycle.

Lights on bicycle

55. Every bicycle while in operation on a highway at night shall be equipped with one headlamp at the front and one reflector at the rear of the bicycle.

Safety helmets

167. (1) No person shall operate a motor cycle, scooter or power bicycle unless the person is wearing a safety helmet securely attached.
- (2) No person shall ride as a passenger on a motor cycle, scooter or power bicycle unless the person is wearing a safety helmet securely attached.
- (2a) No person shall operate a motor cycle, scooter or power bicycle on which a passenger is riding unless the passenger is wearing a safety helmet securely attached.

Yielding to pedestrians

125. (1) A driver shall yield the right of way to a pedestrian crossing the roadway within a crosswalk.
- (2) Whenever any vehicle is stopped at a crosswalk to permit a pedestrian to cross the roadway, any other driver approaching from the rear shall not overtake and pass the stopped vehicle.
- (3) At any place upon a roadway other than at a crosswalk the driver of a vehicle has the right of way over pedestrians, unless otherwise directed by a peace officer or a traffic control signal, but nothing in this subsection relieves a driver from the duty of exercising due care for the safety of pedestrians.

Pedestrians crossing

173. (1) Every pedestrian crossing a roadway shall cross as quickly as is reasonably possible without stopping or loitering or otherwise impeding the free movement of vehicles thereon.
- (2) A pedestrian shall not step onto a roadway and walk or run into the path of any vehicle that is so close that it is impracticable for the driver of the vehicle to yield the right of way.

Parades and processions

182. (1) No pedestrian shall
- (a) break through the ranks of a military or funeral procession, or
 - (b) break through the ranks of any other authorized parade or procession,
- or in any way obstruct, impede or interfere therewith.
- (2) No pedestrian shall cross on a green or a walk light while a parade or procession is in the intersection.

Physical Fitness Requirements

The operator of a car, bus or truck must have full use of all senses and limbs in order to drive properly and safely. Thus, if you are partially or completely color blind, your license might only allow you to drive if accompanied by someone with sufficient color vision to identify such colors as those of traffic lights; or if your eyesight is poor, your license might require that you wear a certain type of prescription lens; or if you have only one leg, the driver's license would probably restrict you to driving a car with automatic transmission.

There are several physical handicaps which do not prevent a person from getting a license provided that the operation of the motor vehicle is restricted to instances which sufficiently compensate for the deficiency. In some cases, applicants have to take a special course of instruction before a license is issued. On the other hand, there are some physical disabilities that cannot be compensated for which might prevent the issuance of a license altogether such as a history of heart attacks or fainting spells. Even if your driver's license was issued without restrictions, should you become physically disabled in any way it is your responsibility to inform the authorities. This can be done when applying to renew your driver's license if the time is appropriate, or as soon as possible.

Rules of the Road

Some rules that govern motoring, as we have seen, are established by legislation. Others are derived from common sense, altered or modified by judges through their decisions in cases involving vehicles and traffic accidents. The rules of the road given here, by no means a complete list, are virtually the same all across Canada and the United States.

1. The operator of a motor vehicle should drive with due care and attention, and with reasonable consideration for others.
2. It is your duty to obey all police directions as long as you have had a reasonable opportunity to become aware of those directions. This not only includes police directing traffic on the street, but also the directions of police attempting to stop a motor vehicle by indicating that the driver should pull over.

3. Where two vehicles are approaching an intersection at approximately the same time, it is the duty of the driver on the left to yield to the vehicle approaching from the right.
4. When you come to a stop sign, you must bring your vehicle to a full stop before entering the intersection. The location of the sign does not necessarily coincide with the place where the vehicle should stop. You must stop in front of the marked stop line, or if there is none, before crossing the pedestrian walk. If the pedestrian crossing is not marked, then consider it to be the hypothetical extension of the sidewalk. You must yield to any pedestrian or other vehicle close enough to constitute an immediate hazard; only when the coast is clear may you proceed with caution.
5. Police, fire, ambulance and other emergency vehicles, as well as cars in a funeral procession, are not exempt from the rules of the road and must normally comply with stop signs or any other directions as to right-of-way. A funeral is sometimes accompanied by a police escort. Before the procession arrives, an officer may enter an intersection and direct traffic personally. He thus supercedes any traffic sign or lights at the intersection.
6. On approaching a yield sign, you must slow down to whatever speed due care would demand in the circumstances - including stopping completely -- and yield to any traffic that is already there or that is approaching which would constitute an immediate hazard.
7. Where there is a properly marked pedestrian crossover, all traffic must yield to pedestrians who have indicated their intentions to cross the street and have given approaching traffic sufficient opportunity to yield the right-of-way. The traffic on the half of the roadway which the pedestrian is crossing as well as the traffic on the other half must stop. Only when a pedestrian has crossed your half of the roadway, and is continuing across the other half, may you proceed. If a pedestrian is not crossing at a marked crossover or at a controlled intersection, then the pedestrian must give way to traffic in motion.
8. If you plan to turn, indicate your intention well in advance. This gives other drivers the opportunity to adjust their course and speed.
9. Except on freeways, U-turns are generally permitted provided you have sufficient visibility (150 meters) in each direction and are not within 25 meters of a railway crossing. Municipalities often pass bylaws prohibiting U-turns on certain busy streets; signs are usually posted to this effect.
10. When you see a flashing amber light, slow down and proceed with caution. A flashing red light is similar to a stop sign. You must come to a complete stop and then proceed with caution into the intersection, yielding the right-of-way to oncoming traffic.
11. If there is more than one lane of traffic moving in the same direction, the slower driver is required to take the right-hand lane, or to travel as close to the right as possible. The left lane is reserved for passing and for vehicles intending to turn left.

12. It is an offense to follow another vehicle too closely and it will usually be considered your fault if you hit another car from behind.
13. When you hear a siren or see the flashing light for a police, fire, ambulance or other emergency vehicle, you are required to pull as far to the right as possible and come to a stop. If you are in or near an intersection, first get clear of it. Emergency vehicles are not exempt from the rules of the road but they do, by their emergency nature, acquire some right-of-way over other vehicles. This cleared way should not be used by other persons and it is an offense to follow a fire truck more closely than 150 meters.
14. It is an offense to take a tow behind a car when you are on a bicycle, toboggan, sled, skis, or other such mode of transportation whether the driver consents or not. If children grab the rear of your car seeking to be pulled, you must stop and shoo them away as soon as you become aware of it.
15. Where a flasher or other signal is operating, or a flag bearer is giving a warning of a train, you must come to a stop at least 15 meters from the rails. It is an offense to proceed before the signals stop their warning.
16. It is forbidden to park on the highway when there is room for you to pull onto a shoulder or other area. It is also an offense to park in a way that would interfere with traffic or interfere with the removal of snow. If your car will not run and you cannot move it off the highway, you would probably have a good excuse for illegal parking. However, if an accident resulted, you might be found liable if it could be proved that you knew, or should have known prior to starting out, that the car was not in working order and might break down.

Negligence in the Operation of Vehicles

It is for the courts to determine the liability of a person operating a motor vehicle and in doing so it will take into consideration such factors as to whom the operator of the motor vehicle has a duty of care, the foreseeability of damages, and the tests to be applied in determining what is or is not a careless or negligent act. In most cases the "test of the reasonable person" will be used in conjunction with the standards of care laid down in the Highway Traffic Act and other statutes. By way of illustration, it could be argued that the speed limits set out in the Highway Traffic Act are the safe limits within which a person must drive. But such speed limits are the maximum limits allowed, and therefore the test of the reasonable person is also applied in determining what is or is not a safe speed. Suppose, for example, that the speed limit in a community is fifty kilometres per hour. However, if it is a snowy day with poor visibility and many children are on the sidewalk and crossing the street to get to or from school, no prudent person would drive at the speed limit under such conditions. In other words, any person who would drive at that speed could not pass the test of being reasonable under the circumstances.

Owner's Liability

It is necessary to understand what is meant by the term "owner" as it is used in the Highway Traffic Act. Frequently the title to property will be registered in one person's name, although this person is not in fact the owner. In such a case the person in whose name the title is held will only be a trustee. For example, if a person transfers the ownership of a motor vehicle to a car dealer with instructions that it should be sold, then the car dealer is a trustee, even though the motor vehicle is now registered in the dealer's name. The dealer cannot therefore be held liable as the owner as the word owner is used in the Highway Traffic Act.

Another example is where a vehicle is sold under a conditional sales contract. Such an agreement provides that the person to whom the vehicle was sold is entitled to have possession and use of it so long as the payments are made. The buyer does not get a complete bill of sale until the vehicle is completely paid for. Technically then, the owner of the vehicle is the seller until all payments are made. However, the Highway Traffic Act does not define an owner as being the person who has the title; under the Act the owner would be the person who had actual possession of the vehicle under the terms of the contract.

The owner of a motor vehicle, as well as the driver, is liable for any loss or damage suffered by anyone due to the negligent operation of the motor vehicle. Once ownership of the vehicle is determined, the owner can only escape liability if it can be proved that the vehicle was in someone else's possession without the owner's consent. However, the owner cannot escape liability just because a person who had permission of drive the vehicle did not obey the owner's instructions. This kind of liability is called "vicarious liability," which means that the law holds one person liable for the misconduct of another. Therefore, if an owner of a vehicle allows someone to drive on the highway to a specified destination, but instead the person goes by a completely different route to another place, the fact that the vehicle was on the road with the owner's consent is sufficient to make the owner liable in case of an accident. An example of just such a case occurred in Ontario. The owner of a car had given his son permission to drive it to a theatre. However, in actual fact, the son drove it to a tavern and was later involved in an accident. The owner of the car was held liable for the damages even though he had only given consent to have it driven to the theatre and not a tavern.

The same principle of vicarious liability also applies to the owner of a vehicle which is used for business purposes. The general rule is that the person who has the right to control the driver in the performance of employment duties is liable for the employee's negligence, provided the employee was working at the time.

Example:

A truck driver was making rounds picking up empty bottles, driving his employer's truck. Contrary to company rules, he picked up a friend and drove him on a roundabout trip to his home. On the way back, he caused an accident, injuring the plaintiff. The court held that the employer was not liable for the acts of his driver, since the driver was off on a "forlic of his own" at the time. A driver who takes or uses his employer's vehicle without authority is away from his duty and acts upon his own risk both to third parties and to damage done to his employer's vehicle.

Pedestrians

When a motor vehicle strikes a pedestrian or some property other than a moving vehicle, the burden of proof as to what caused the accident rests upon the driver. The motorist must satisfy the court that he or she was driving in a careful and prudent manner; but the pedestrian on the other hand, is not absolved of an obligation to exercise caution and to obey the traffic rules.

Example:

A motorist was driving down a narrow roadway at a speed of about fifteen kilometres per hour. She anticipated that there might be pedestrians crossing and had slowed down for that reason. The plaintiff and another woman stepped out from between parked cars without looking. The defendant immediately applied the brakes, which were in perfect order, but the plaintiff was struck and injured. The court held that the defendant had in fact been driving at a reasonable speed, and had taken all precautions to avoid an accident. The onus then fell on the pedestrian to satisfy the court that the motorist had failed to do something as the result of which she was injured. Since the pedestrian had stepped out between parked cars, she was held responsible for the accident.

Passengers

A gratuitous or non-paying passenger is not permitted by law to sue the owner or driver of the vehicle if the passenger is injured as a result of an accident, unless the passenger can show the driver was grossly negligent in operating the vehicle. Gross negligence is carelessness of such a degree as to show a wanton disregard for the rights or safety of others.

Example:

The plaintiff was injured while riding in the car of the defendant. Testimony showed that the two spent several days together during which the defendant was driving and drinking a great deal. The defendant's driving became steadily worse and the plaintiff finally asked him to drive more sensibly. The defendant became suddenly enraged when another car passed him and he chased it at speeds in excess of one hundred and fifty kilometres per hour. The car rolled into a ditch while trying to negotiate a sharp curve and the plaintiff was seriously injured. The court ruled that the plaintiff had ample opportunity to get out of the car during the preceding days when the defendant's drinking became intolerable and his driving was obviously dangerous.

Assumption of Risk

Where it can be shown that the plaintiff assumed the risk of accident, no action brought against the driver will be successful. As stated previously, a gratuitous passenger cannot hold the driver liable unless the driver was guilty of gross negligence. In the absence of gross negligence, it is held by the courts that the passenger assumed the risk of ordinary highway dangers. Where there is evidence of gross negligence, the burden lies upon the driver to prove that the passenger agreed to exempt the driver from liability, either expressly in words or by actions. There must be some evidence to support the claim that the gratuitous passenger had agreed to take the risks involved.

Example:

The plaintiff was a passenger in the defendant's car. After the defendant committed a traffic violation the car was chased by the police. The plaintiff urged the defendant to outrun the police, and during the chase he continued to urge the driver to go faster. Finally the car crashed and both men were injured. The court found the defendant to be grossly negligent but awarded the plaintiff no damages because by his actions it was assumed that he had accepted the risks involved.

Example:

The plaintiff was riding in a car with the defendant when they stopped at a traffic light. The driver of another car challenged the defendant to take part in a race when the light changed to green. The defendant accepted the challenge and raced over the next rise where he struck a slower moving car. The court awarded the plaintiff full damages for his injuries since he was not consulted about the race and could not be said to have consented to the risk.

Unexpected Occurrences

Motor vehicle drivers are not expected to anticipate everything that is likely to occur on the highway. They are not mind readers and are entitled to assume that other motorists will observe the laws and use due caution. A driver who has apparently caused an accident may be able to avoid liability for it if it can be shown that the wrongful act was forced upon the driver by someone else.

To illustrate, assume that you are driving down a road well within the speed limit. Along your right side is a 3 meter high steel fence adjacent to the road and that a school bus is coming from the opposite direction. Just as you near the bus, a child scrambles over the fence and onto the road. It appears that you have several choices: (1) hit the child, (2) hit the bus, (3) hit the fence, or (4) try to make it to the ditch on the left side of the road. You decide to cross the white line and almost make it to the ditch, but you hit the bus. One person in the bus is injured and the physical evidence suggests that you are at fault in going across the line and hitting the bus. Fortunately, there are witnesses who tell of the presence of the child. In a similar case the court held that in an emergency not created by the negligence of the driver, the driver is not negligent solely because the driver did not choose the best course of action.

Inevitable Accident

An inevitable accident is one in which the party accused of causing the accident could not possibly have prevented it by reasonable care and skill. To succeed in the defence of inevitable accident it must be proven that the driver did not cause the accident at all, or that since there were only a certain number of possible causes and the driver did not create any of them, the driver could not be responsible for the accident. Such a defence would fall into one or two general categories; machine failure or driver failure which was unforeseeable.

1. **Machine Failure** - All drivers have a responsibility to inspect and maintain their vehicles. However, automobiles are complex machines and therefore the determination of liability will rest upon whether or not the defect could have been easily detected if the owner/driver had bothered to check the vehicle periodically or had a mechanic do it.

Example:

The defendant lost control of his vehicle and crashed into the plaintiff's car. He alleged that the steering mechanism on his car was defective and therefore the accident was inevitable. It was proven that when he bought the car it was seven years old, and had not had a mechanical inspection. The plaintiff showed that a simple inspection by a mechanic would have revealed the steering defect. The court held that this was not an inevitable accident. The dangerous condition of the vehicle could have been detected by the defendant if he had taken any interest in the condition of his car.

Example:

The defendant's car struck the plaintiff while he was walking along a street. The defendant pleaded inevitable accident and introduced evidence to show that a freakish failure of the brakes had caused him to lose control and strike the plaintiff. The evidence led to the conclusion that ordinary inspection of the braking system would not have revealed the defect and that there was no negligence on the part of the defendant. The case was dismissed.

2. **Driver Failure** - To succeed with this defence it must be proven that the failure to exercise due caution and care was without any negligence on the driver's part. If, for example, a driver who is in reasonably good physical condition suddenly has a heart attack and crashes into another vehicle, the accident could not be blamed on the driver's negligence.

Example:

A driver who caused an accident because he fell asleep at the wheel lost his case on the grounds of inevitable accident when it was learned that he had not had any sleep in the forty-eight hour period immediately preceding the accident. The court held that the driver could have reasonably foreseen the consequences of driving a car while being so tired.

Example:

The defendant died at the wheel and crashed into the plaintiff's vehicle causing damage. Medical evidence showed that the defendant had been suffering a long, painful illness and was in considerable pain the night he died. The court held this was not an inevitable accident, since the defendant had ample warning he was not fit to drive. His estate was made liable for the damage.

Criminal Offences

The conduct of motor vehicles on the highway is governed by each of the provinces. Such areas as vehicle registration and licensing, insurance, and posting of speed limits all come under provincial, not federal jurisdiction. However, the federal law does apply when a vehicle is misused to such an extent that it comes a danger to other motorists and the public in general. Such misconduct is regarded as being criminal in nature and is defined as such in the Criminal Code as follows:

1. Every one who is criminally negligent in the operation of a motor vehicle is guilty of
 - (a) an indictable offence and is liable to imprisonment for five years, or
 - (b) an offence punishable on summary conviction.
2. Individuals who, having the care, charge or control of a vehicle that is involved in an accident with a person, vehicle or cattle in charge of a person, with intent to escape civil or criminal liability fails to stop their vehicle, give their name and address and, where any person has been injured, offer assistance, are guilty of
 - (a) an indictable offence and liable to imprisonment for two years, or
 - (b) an offence punishable on summary conviction.
3. Every one who drives a motor vehicle on a street, road, highway or other public place in a manner that is dangerous to the public, having regard to all the circumstances including the nature, condition and use of such place and the amount of traffic that at the time is or might be reasonably expected to be on such place, is guilty of
 - (a) an indictable offence and is liable to imprisonment for two years, or
 - (b) an offence punishable on summary conviction.

For a charge of criminal negligence to succeed the Crown must demonstrate that the driver was aware of the risk to the lives and safety of others, and that the driver was completely unconcerned about them. The driver who makes a mistake by pulling out to pass at the wrong time cannot be said to be aware that others are in danger and to be recklessly disregarding their safety. An example of criminal negligence would be where a driver swerves in and out of highway traffic without signaling and allowing for proper clearance, and on several occasions almost hits on-coming traffic by not allowing for proper clearance and excessive speed. The facts of this case show that such a driver must be aware of the danger to other lives and property, and by continuing to drive in the same reckless manner the driver is showing a wanton disregard for their safety.

As described above in subsection (2) of the Criminal Code, the offence which is referred to is "hit-and-run." Leaving the scene of an accident is for all intents and purposes an admission of guilt, even though the driver may not necessarily be at fault. For example, a man struck and injured a boy riding a bicycle. The boy was almost entirely responsible, as he was riding the bike in an erratic and unsafe manner. However, the man panicked and drove off. The police eventually tracked him down and he was found guilty of leaving the scene of an accident and received a one-year suspended sentence. He was also successfully sued for damages by the boy's parents.

Every year literally thousands of motorists try to get away with leaving the scene of an accident; unfortunately, about 70 per cent are successful. Often unoccupied vehicles are damaged in parking lots or on the street and there are no witnesses. But when a driver hits a car or pedestrian and leaves a person injured or dead, the chances of evading the law are reduced. Where injuries or extensive damage is involved, the hit and run investigators go to the RCMP crime laboratory for help. In a recent case in which a pedestrian was killed, lab technicians helped identify the runaway motorist by determining the make, model and year of the hit-and-run vehicle from the paint removed from the victim's clothes. A computer check of the vehicle registry left police with four suspect vehicles. The last one checked was the hit-and-run vehicle.

From their experience in dealing with such offences, the police say drivers leave the scene of an accident for one of three reasons: either they have a suspended license, have been drinking, or have no insurance. But the police also point out that if the accident is late at night and there are no witnesses, many drivers look at it as simply a chance to get away with something.

If you are the victim of a hit and run, law enforcement agencies offer the following advice:

1. Stay calm and think clearly.
2. If you are in the car at the time of the accident, immediately write down all the particulars.
3. Include not only the hit-and-run car's license number, but the make, model and possible year.
4. Look at the driver and write down a description.
5. Report the accident to police as soon as possible.
6. Don't move your damaged vehicle; police will want to look for debris and paint flakes from the hit-and-run vehicle.
7. If your vehicle is unoccupied and parked on the street when it is hit, check neighbours and other possible witnesses.
8. Try to determine where your vehicle was and when it was hit.

9. Look for physical evidence from the other vehicle.
10. Call police as soon as possible.
11. Notify your insurance company and inform them that a police investigation is being carried out.

In addition to charges under the Criminal Code, there are many offences related to motor vehicles which are found in various provincial statutes.

Liquor Control Act

Under the *Liquor Control Act*, a peace officer is permitted to search a vehicle and its occupants for liquor unlawfully kept there, or kept there for unlawful purposes (section 115). The officer does not require a search warrant to do this. If the officer finds liquor kept in a vehicle in such a way as to breach the Act, he may seize both the liquor and the vehicle in which it is found. If a person is convicted of keeping liquor in the vehicle in a manner which breaks the law, the court may order that the liquor and the vehicle be forfeited (surrendered) to the province. Section 83 provides that liquor may only be carried in a vehicle if it is in the luggage, luggage compartment, or in some other place that is not within easy access of the driver. Also, the bottle must be closed. Consumption of liquor in a vehicle may result in a fine of up to \$500 on a first offence. On a second offence, a fine may range from \$300 to \$1000 or up to four months in jail, or both fine and jail. A third conviction brings with it a mandatory jail sentence (maximum six months) with no option to pay a fine instead.

Motor Vehicle Administration Act

The *Motor Vehicle Administration Act* is concerned with many of the nuts and bolts issues of owning and operating a motor vehicle. The statute describes the requirements for a driver's license, necessity for registration of the vehicle, need for insurance, and proper display of license plates, among other things. It also indicates the duties imposed on a person if involved in an accident with another vehicle, person or object. Section 76 requires you to remain at the scene of an accident, render all reasonable assistance, and to provide name, address and other particulars to a witness or peace officer. If a person fails to carry out these duties he may be arrested by the police without the police being required to obtain a warrant. These same arrest powers are available to the police when they suspect someone of using defaced or altered license plates or failing to properly display plates, and in dealing with someone lacking proper registration or a valid license. In addition, section 89 gives police officers the power to request a driver to halt his vehicle, and to furnish the information respecting the vehicle and driver that the officer requires. Failure to comply with a request to halt or to supply the requisite information may result in immediate arrest. Section 110 of the legislation empowers the police to require a driver to surrender his driver's license for a period of up to 24 hours if the officer believes that the driver's physical or mental ability to drive has become affected by alcohol or drugs. This does not mean necessarily that a driver required to surrender his license for 24 hours would be charged with impaired driving, but the possibility of such a charge is there.

Operating a motor vehicle in a criminally negligent manner or dangerous driving, both of which are violations of the Criminal Code, will result in a six month driver's license suspension being imposed by virtue of the *Motor Vehicle Administration Act*. Similarly, convictions for certain types of offences under the *Highway Traffic Act* are punishable by imposition of a license suspension for up to three months, suspension being in addition to any other penalty (i.e. fine or jail) already imposed. The power of suspension in these circumstances is given by section 106 of the *Motor Vehicle Administration Act*. The types of offences under the *Highway Traffic Act* for which a suspension might be used includes some speeding violations, careless driving, racing, failure to stop at a red light, and other "rules of the road" violations.

Examples of penalties for infractions of the provisions of the *Motor Vehicle Administration Act* include a fine of up to \$2000 on a first offence for driving without a valid license, with a mandatory jail sentence of at least 14 days but no more than 6 months on a second or subsequent offence. Driving without proper registration can bring a fine of up to \$200. Failure to produce a driver's license or registration on demand by a peace officer could lead to a fine. Producing invalid insurance or driving while uninsured brings with it a maximum fine of \$400 on a first offence, and on each subsequent offence a jail term ranging from 30 days to 6 months. In addition, Section 57 of the *Motor Vehicle Administration Act* provides that if an Albertan fails to pay a fine imposed elsewhere in Canada, that driver may have his license suspended in Alberta until the fine is paid.

Highway Traffic Act

As previously indicated in this lesson, the *Highway Traffic Act* is another provincial statute important to motor vehicle operators. It deals with proper equipment (e.g. horn, muffler, location and number of lights), rules of the road (passing, stopping, yielding, etc.) and such offences as careless driving, racing, stunting, and following too closely. The general penalty provision of this Act calls for a fine of not more than \$500 and up to 6 months in jail if there is a failure to pay the fine. Alternatively, a court can impose a jail sentence of 6 months or less with no option to pay a fine. However, certain violations of the *Highway Traffic Act* have penalties which differ from the general penalty provisions. For example, speeding offences may result in fines for \$20 to \$150 depending upon the speed. Careless driving is an offence which makes a person liable for a fine of \$1000 or less, and a jail term of 6 months or less should the fine not be paid. A court also may impose a jail term without an option to pay a fine in this instance.

Police power to arrest without warrant is conferred for those situations where the officer believes the offence of careless driving, racing, or defacing traffic signs (among other offences) has occurred. Power of arrest without warrant is also available should a driver fail to stop his vehicle after a police request to do so.

Off-Highway Vehicle Act

The *Off-Highway Vehicle Act* is legislation dealing with vehicles designed for cross country travel such as snow mobiles, amphibious machines, mini bikes and all terrain vehicles. Registration and insurance are required for these vehicles **unless** the vehicle is operated on the driver's own land or on other land with consent of the owner of that other land. An off-highway vehicle may not be operated on a highway except to **cross** it, and in those circumstances the vehicle is required to take the shortest route possible and all passengers must disembark.

If involved in an accident, the driver of an off-highway vehicle must remain at the scene, render assistance, and give his name and address and other particulars. The penalty for careless driving while operating an off-highway vehicle is the same as that for a motor vehicle under the *Highway Traffic Act*. For other offences under this Act, a maximum fine of \$100 is the general rule.

Motor Vehicle Claims Act

Finally, mention should be made of the *Motor Vehicle Claims Act*, a statute which provides a fund from which money may be paid for injuries or property damage sustained when involved in an accident with an **uninsured** driver. Very generally, the Administrator of the Fund will pay out the claim and then attempt to recover that money from the uninsured driver. If repayment is not made, there is authority under the Act to suspend the uninsured driver's license until repayment is made.

Impaired Driving

The sections of the *Criminal Code of Canada* that govern the area of what is commonly referred to as 'impaired driving' are as follows:

Section 234.1 Criminal Code of Canada

- (1) Where a peace officer reasonably suspects that a person who is driving a motor vehicle or who has the care or control of a motor vehicle, whether it is in motion or not, has alcohol in his body, he may, by demand made to that person, require him to provide forthwith a sample of his breath by means of an approved roadside screening device.

Section 234.1 and 235 Criminal Code of Canada

- (2) Failure or refusal to comply with **all** demands for a breath sample is an indictable offence and carries with it the same penalties that are handed out to someone whose BAC is over 80 mg%.

Section 234 Criminal Code of Canada

Everyone who, while his ability to drive a motor vehicle is impaired by alcohol or a drug, drives a motor vehicle or has the care or control of a motor vehicle, whether it is in motion or not, is guilty of an indictable offence or an offence punishable on summary conviction.

Section 236 Criminal Code of Canada

- (1) If you drive a motor vehicle or have the care or control of a motor vehicle, whether it is in motion or not, having consumed alcohol in such a quantity that the proportion therefore in your blood exceeds 80 milligrams of alcohol in 100 millilitres of blood, you are guilty of an indictable offence or an offence punishable on summary conviction.

It should be noted that the above sections of the Criminal Code not only creates the offence of impaired driving, but also the offence of having care or control of a motor vehicle whether in motion or not. For example, the accused was found in an automobile in a ditch beside the road. He was asleep behind the wheel. The key was in the ignition switch and the ignition was turned off. The motor was not running but was capable of doing so. The automobile could not be moved under its own power and had to be towed out. The accused was in an impaired condition and was charged with the care or control of a motor vehicle while his ability to drive was impaired. He was found guilty as charged. The court held that if the driver is in the car for the purpose of setting it in motion, or has previously set it in motion, this constitutes impaired driving.

The Criminal Code makes it an offence simply to drive, or have care or control of a motor vehicle while the alcohol in the bloodstream exceeds the prohibited level of .08 per cent. However, the tolerance of people to alcohol varies, and unfortunately too many drivers feel that they can drink substantial amounts without impairing their ability to drive. The amount of alcohol in the bloodstream is usually ascertained by testing a person's breath using a breathalyzer machine.

The number of milligrams of alcohol per 100 millilitres of blood in the bloodstream produced by a drink (a 12 oz. bottle of beer or 1½ oz. of whiskey, gin, etc.) varies with the weight of the drinker. Also the body gradually uses or eliminates the alcohol consumed and therefore the mg. level slowly descends, unless of course more alcohol is consumed. As a result, no simple statement can be made as to how many drinks will produce the 80 mg level. However, the following examples may be helpful:

- a 85 Kg person who has four drinks in one hour will have, at the end of that hour, 75 mg of alcohol per 100 millilitres of blood in the bloodstream. Six drinks would produce a level of 120 mg.
- a 75 Kg person who has four drinks in one hour will have a level of 90 mg. Six drinks would produce a level of 143 mg.
- a 55 Kg persons who has four drinks in one hour will have a level of 125 mg. Six drinks would produce a level of 195 mg. Three drinks would produce a count of 90 mg.

There is no doubt that drinking affects driving ability adversely and produces a higher frequency of accident per mile driven. One study has demonstrated that blood-alcohol levels as low as .04% are definitely associated with accident involvement and that the probability of involvement increases at levels over .08% and becomes extremely high at levels above .15%. Furthermore, when drivers have levels of over .08% they tend to have more single vehicle accidents, more severe and more expensive

accidents. A recent study of fatal accidents indicated that 65 per cent of all the drivers involved had been drinking, and still more shocking was the disclosure that 50 per cent of them were actually alcoholics. These studies indicate that alcohol and gasoline truly do not mix.

Driving a car is more difficult than simply getting a complicated piece of machinery from Point A to Point B. It demands peak mental condition just to steer clear of other vehicles, pedestrians, bicyclists, etc. Alcohol not only slows you down but it also distorts what you see and impairs your judgement.

Ability to judge distances between stationary objects is reduced, as is the ability to gauge the distances between moving objects.

Impaired drivers tend to make fewer visual scans of the environment. They are also more likely to look at one thing, such as lane markers or a traffic sign for longer periods of time.

Alcohol also affects the normal rapid movement of your eyes - called "*saccadic*" movement, over which you have no voluntary control. This movement allows you to identify the presence of objects which are on the periphery of your visual field.

Night driving involves additional problems. The ability to accommodate to sudden darkness is impaired. The greater the concentration of alcohol in your blood, the longer the glare recovery time. (This refers to the period of readjustment during which you are partially blinded when you move from a brightly lit environment to sudden darkness - an event you experience each time the headlights of an oncoming vehicle pass you.)

Alcohol is an *anaesthetic*. Its effects are similar to ether or chloroform. As a central nervous system depressant, it affects all parts of your body controlled by the brain. Consequently it has profound effects on your ability to make correct decisions at the right time.

Most people have heard about the breathalyzer machine, and know it is against the law to drive, or be in care or control of a motor vehicle with a blood alcohol level greater than .08 (or 80 milligrams in 100 millilitres).

There are three different types of breathalyzer offences. The *first* involves driving, or having care or control of a motor vehicle, with a blood alcohol level over .08. The blood alcohol reading is determined with an approved breathalyzer. *Secondly*, it is an offence to refuse to submit to a breathalyzer test. *Finally*, it is an offence to refuse to give a sample of air for a roadside testing unit known as an ALERT.

The ALERT, as the name implies, is designed to give the officer an estimate of your BAC (Blood Alcohol Concentration). It has a light indicator which can be set to come on if your BAC is greater than 80 mg%.

If the ALERT glows yellow, showing you have a blood alcohol content very close to the limit, the police may simply suspend your driver's license for 24 hours. (It is an offence to refuse to take an ALERT test.)

If the fail light is illuminated (glowing red), your BAC is greater than 80 mg%. The police officer now has grounds to take you to the nearest police station to obtain additional samples of your breath. If it is confirmed that your BAC is above the legal limit, you will be charged.

The breathalyzer offences should not be confused with the offence of impaired driving. You can be convicted of impaired driving without ever having taken a breathalyzer test. *The law recognizes that you can be impaired at levels lower than 80 mg%. Factors such as fatigue, drinking experience, drugs and emotional state can interact with alcohol and result in impairment long before your BAC reaches 80 mg%. In addition, you may be impaired by drugs alone.* You can be charged with impaired driving and a breathalyzer offence arising out of the same incident. (The most common combination is impaired driving and refusing to take a breathalyzer test.)

Another point to remember is that you can be convicted of the .08 offence even if you weren't found driving a motor vehicle, as long as it is proven that you were in "care or control" of the vehicle. Whether or not you are in care or control of a vehicle depends on a number of things - including your position in or near the vehicle, the location of the keys and whether or not you had the intention to drive. If you are found in the driver's seat you are legally presumed to be in "care or control" unless you can establish that you did not enter the driver's seat for the purpose of setting the vehicle in motion.

For example: If the police found you asleep in the driver's seat and your BAC turned out to be over .08, you would undoubtedly be convicted of having care or control of a vehicle while over .08.

Let us now look at some of the ramifications of convictions for any of the various offences outlined. On *first* conviction for either failing the breathalyzer test or impaired driving, there will be an *AUTOMATIC suspension of your driving privileges* in Alberta for a period of six months (Motor Vehicles Administration Act), and a suspension of driving privileges in other provinces for time periods as specified in each province's legislation. (This suspension is by the authority of the Minister and is not subject to review by the Courts). There is one exception, however, the Court has the discretion to reduce the suspension to three months if you can prove you were not driving, but rather only in "care or control" of your vehicle. Additionally, there is no longer any jurisdiction for the Court to award what is commonly referred to as a *restricted license* to allow you to operate your vehicle for the purpose of work. Your fine will be not less than \$50.00, and not more than \$2,000.00 or imprisonment for up to six months, or both.

A conviction as a consequence of refusing to take the breathalyzer test will carry an automatic suspension of your driver's license for three months, and a fine as determined by the Court. (Most importantly you must remember that in conjunction with a charge of refusal to take the breathalyzer, you also will be charged with impaired driving - the ramifications of which have been indicated previously.)

On *second* conviction for either impaired driving, failing the breathalyzer test or refusing the breathalyzer test, the disqualification of driving privileges will extend for a period of 12 months if the previous offence has been committed in the preceding five years. Fines usually range from \$300.00 to \$1,000.00, but again, they can go as high as \$2,000.00. If you are being charged as a *second offender*, if convicted, you will receive a jail sentence of not less than 14 days and as long as one year.

On *third* conviction for either impaired driving, failing the breathalyzer test or refusing the breathalyzer test, the suspension of driving privileges will extend for a period of 36 months if the two previous offences occurred within the last ten years. The penalty on *third* conviction is usually 14 days to six months in jail. (If the Court is proceeding by way of "subsequent offence" you will, if convicted, be sent to jail for at least three months and as long as two years.)

In Alberta, persons convicted of these offences are required to participate in an *impaired driver's course*, as a condition of license reinstatement. (A regulation under the Motor Vehicles Administration Act). This course is operated by the Alberta Alcoholism and Drug Abuse Commission (A.A.D.A.C.). The course is a one-day, seven-hour program using the instructional techniques of short lectures, guided discussions, films, group exercises, and case studies. Six subjects are dealt with: the law and impaired driving; alcohol, the body, and driving skills; drinking lifestyles; personal and social costs of impaired driving; how attitudes affect driving; and alternatives to drinking and driving.

If you were driving in an erratic manner the police will usually follow you or attempt to observe you for at least a brief period of time before actually pulling you over. (Erratic driving is a good, although not conclusive, indication of impairment.) After a period of observation, the police will usually activate their overhead lights as a signal for you to pull over. The officer (or officers) immediately make certain observations of your condition in an effort to formulate in their minds as to whether there is a necessity to demand that you provide them with a sample of your breath.

Factors upon which an officer will base his opinion:

Glassy eyes, slurred speech, smell of alcohol on your breath, or in your vehicle, presence of alcohol in your vehicle, inability to produce driving particulars, fumbling, dropping wallet, etc., flushed face, unsteady on feet, lack of ability to hold proper conversation, necessity to lean against objects to maintain proper balance, inability to walk a straight line, or pick up an object off the ground; quick temper, shabby appearance, inability to touch nose with right or left hand upon police command.

After the police officers have had the opportunity to observe you in light of the above factors, an opinion will be formulated by the officers as to your ability to drive the vehicle in question. If they feel you've had too much to drink they will formally demand that you provide breath samples either by using the roadside alert machine or by accompanying them to the police station for the purpose of using the breathalyzer machine.

Upon arrest the police must inform you of your right to counsel.

You may refuse to take the breathalyzer test, but thereupon, you will be immediately charged with refusing to take the breathalyzer test which carries a three month suspension on first conviction, and you will almost certainly be additionally charged with the offence of impaired driving, which carries an *automatic* six-month suspension on first conviction.

Upon arrival at the police station you should immediately ask to speak to your lawyer. If the benefit of counsel is refused to you it will be a reasonable excuse not to give a breath sample. The officer need only supply you with a telephone. If you are unsuccessful in reaching a lawyer, it will matter not as the officer has fulfilled his obligations as far as they need be.

You will be required to provide at least two samples of your breath by blowing into a breathalyzer mouthpiece. These samples must be taken at least 15 minutes apart. The samples should also be taken within two hours of the commission of the alleged offence. If the test indicates that your BAC (blood-alcohol content) exceeds the legal limit of .08 a certificate of analysis will be completed by the breathalyzer technician. The certificate will record the results of at least two readings and the times when each were taken. You will be served with a copy of this certificate. This is an extremely complex area of the law and legal advice should be obtained if it is felt that the reading is inaccurate.

After the tests have been performed, the police will usually let you go if they conclude from their observations that you are going to be able to manage getting home or where ever you indicate you are going. In the event that the officers conclude that you are not able to properly look after yourself in your inebriated condition, they will hold you in what is commonly referred to as the *drunk tank* until the early hours of the morning, at which time you will be released.

Only time makes you sober. There really is no *quick* way to sober up. Alcohol is a depressant, not a stimulant. Food doesn't help. It cannot prevent you from going over a .08% blood alcohol content if you over imbibe. Coffee doesn't perform miracles. It won't lower your blood alcohol content. Neither will cold showers, breathing packaged oxygen, or sipping tomato juice. You can't dance, job, sing or cry away alcohol. To become sober your body must oxidize or use up all the alcohol you consume. That usually happens at a rate of .03% an hour. Which means that to sober up you need approximately one or two hours for each drink or bottle of beer.

It is always a good idea to consult a lawyer if you have been charged, whether you have been previously convicted or not, on a preliminary basis. The lawyer will be able to tell you whether or not there is a defense, and what your probable chances for success will be. This will assist you in determining whether you wish to plead *guilty* or *not guilty*. If you decide to plead "guilty" there will not be the necessity for a lawyer on first or second convictions as you will be receiving a fine. **There is one exception to this rule with reference to second conviction- if you are served with a notice from the Crown upon entering your plea that they intend to proceed against you as a second offender under provisions in the Criminal Code, this will indicate that they feel your case is more serious than the ordinary second offender, and they will be ultimately seeking a jail sentence.** If you are

served with one of these notices, ask for an adjournment to consult a lawyer even if you have previously consulted one. If you intend to plead not guilty you definitely should have a lawyer. Fees range from approximately \$400.00 to \$800.00, but the investment may be well worth it.

If there is an accident involved - the insurance company will void your insurance and will refuse to pay any claims.

A conviction of impaired driving initially will surcharge your insurance by 100%, and upwards from there on further convictions. This surcharge will last for a period of three years subsequent to conviction, and so therefore can get very expensive.

Another factor to keep in mind is, upon conviction, you will have a *criminal record*. Simply having a criminal record can present major problems for you. Getting insurance, if it is available to you at all, will be much more expensive - as we stated previously. If you drive for a living, getting bonded may be impossible.

If you are filling out any form which asks, "have you ever been convicted of a criminal offence?" you must answer, "yes." This may keep you from getting a job, or leaving the country, even for a holiday. If you answer "no", you can be charged with giving false information, which is a serious offence.

The Traffic Ticket

One of three forms may be used when a person is charged with an offence involving the use of a motor vehicle. These include:

1. a separate "information" and "Summons" or "Appearance Notice;"
2. a "traffic ticket summons;" and
3. a "traffic tag."

1. Separate Information and Summons

Usually in criminal proceedings, and sometimes in less serious proceedings under the Highway Traffic Act, a written accusation of some violation of the law called an information may be sworn before a Provincial Court Judge. Depending upon the circumstances, either a Summons or an Appearance Notice will be issued and served upon the alleged offender, requiring the accused to appear in answer to the charge.

Where it is alleged that a person has committed a driving offence under the Criminal Code, the individual will be arrested and taken into custody, usually for only a short period of time; the information is then sworn and the person is released, having been issued an Appearance Notice stating the date, time and place at which the accused is to attend court. If you are being charged under the Highway Traffic Act, the police officer will, generally speaking, stop and notify you that the officer believes that you have committed an offence. However, it is not absolutely necessary that the officer stop you before laying the information against you, although the police may run into difficulties in court proving your identity if you are not stopped. In any case, the officer will

not give you any ticket or document at that time, but will simply ask you to produce your driver's license and insurance card. In addition, you will be told of the offence which it is believed you have committed.

Should a person be involved in a motor vehicle accident or some other situation out of which a charge under the Highway Traffic Act might arise; a procedure not unlike that mentioned above might be used. If no charges are laid at the time of the incident, but a subsequent investigation reveals that charges can and should be made, whether under the Highway Traffic Act or Criminal Code, an information is then sworn before a judge and a Summons is issued to the alleged offender stating the date, time, and place at which the accused is to attend court. If the person charged fails to appear, a warrant may be issued and the accused will be forcibly brought before the court. If found guilty of a Criminal Code offence, the accused may be liable for a fine and/or a period of imprisonment up to six months. The guilty party will also be assessed demerit points and the judge may order a suspension of the person's right to drive for a period of time anywhere in Canada.

2. Traffic Ticket Summons

There are two fairly different procedures and forms for the issuing of summons for traffic violations. They are:

(a) Voluntary Payment Summons

This is a summons which requires a person to appear in court on a certain date, unless that person both acknowledges guilt and pays the penalty specified on the face of the summons in advance of the court appearance date indicated in the summons and in accordance with the stipulations on the summons. The voluntary payment summons is used by far in the majority of traffic offences.

(b) Regular Summons

A regular summons unconditionally requires the appearance in court on a specified date, of the person to whom the summons is directed. This summons is used in connection with more serious offences under the Highway Traffic Act, and in particular must be issued where an accident has occurred during the commission of, or as a direct result of, an offence relating to the operation of a motor vehicle. The person charged need not necessarily appear in court personally, but may be represented by an agent at both first appearances to set a date for trial and at the trial itself. If represented only by agent at trial, the agent can only give evidence of facts of which the agent has personal knowledge.

Note: The fact that a driver was not ticketed or summoned when stopped by a police officer or at the scene of an accident does not preclude the possibility of a summons being delivered at a later date, but the summons must be dated no later than six months after the date on which the offence is alleged to have occurred.

3. Traffic Tags

The Highway Traffic Act gives the governing council of a municipality the power to enact by-laws in relation to such things as traffic control and parking. They are also given the power to enforce these by-laws by providing monetary penalties for their breach. Almost everyone at one time or another has received a parking tag for some violation, whether it be a "meter" violation or a "no parking" violation. While the tags given for these offences do not ordinarily involve any court appearance, failure to pay the penalty within the time stated on the tag could result in a summons to appear in court being issued. This usually results in court costs being assessed against the offender.

Information Obtained by Police

The driver of a motor vehicle may be questioned by a police officer for one or more of the following reasons:

1. concerning a motor vehicle accident in which the person was involved or was a witness;
2. an alleged violation of the Highway Traffic Act or some other provincial statute;
3. an alleged violation of the Criminal Code.

In all three instances the driver is required by law to give the following information to the police:

1. name and address,
2. motor vehicle liability insurance card,
3. the registration of the motor vehicle, and
4. driver's license.

Even if the police officer asks or demands more information, the driver does not have to give an explanation, opinion, or make any statement. For example, the police may ask how the accident occurred or if the driver had had anything to drink. Any information of this nature which is volunteered by the driver can be used as evidence in any subsequent court case.

Motor Vehicle Accidents

Two separate types of legal action may arise from an accident:

- (a) The police may charge the driver with a Criminal Code offence or a less serious offence under a provincial statute. The matter would then proceed to the Provincial Court. Penalties may include a jail sentence, a fine, or demerit points.
- (b) A civil suit may be instigated by one of the parties to the accident against the other. Where damages are less than \$2,000 the case will be heard in Small Claims Court, where it is not necessary to be represented by a lawyer. Where damages are greater than \$2,000 the case will be heard in Court of Queen's Bench and legal counsel is strongly recommended.

Under the Criminal Code it is an offence liable to three years imprisonment for individuals who have the care, charge or control of a motor vehicle involved in an accident, to fail to stop, give their name and address and to offer assistance where any person has been injured. Furthermore, the Alberta Highway Traffic Act requires drivers directly or indirectly involved in an accident to do all of the following:

- (a) remain at or immediately return to the scene of the accident;
- (b) render all reasonable assistance - this means to attend to any injured persons by attempting to minimize bleeding and calling for medical help;
- (c) produce in writing to anyone sustaining loss or injury, to any peace officer, and to any witness:
 - (i) their name and address;
 - (ii) the number of their operator's license;
 - (iii) the name and address of the registered owner of the vehicle;
 - (iv) the registration number of the motor vehicle;
 - (v) a financial responsibility card in respect of that vehicle;
 - (vi) or such information as is required.

For the driver's own information the following should also be emphasized:

- (d) make no statements, explanations or apologies to anyone but be sure to note those made by anyone else at the scene;
- (e) note any debris, skid marks, and the positions of the cars after the accident and indicate these on a diagram - take any measurements and photographs if possible - note time and weather conditions;
- (f) be sure to get the name and address of all the drivers, registered owners, passengers and witnesses;
- (g) write down the license numbers of all vehicles involved;
- (h) obtain the name of the other driver's insurance company and policy number.

The Highway Traffic Act also requires the driver of a vehicle that collides with an unattended vehicle to stop, locate and notify in writing the person in charge of the unattended vehicle, or leave, in a conspicuous place upon the attended vehicle, a notice containing the following information:

- (a) the name and address of the driver;
- (b) the number of the driver's operator license;
- (c) the registration number of the vehicle striking the unattended vehicle.

In addition, the Act requires the driver of a vehicle involved in an accident causing damage to property other than to a vehicle on or near a highway to take reasonable steps to locate and notify in writing the owner or person in charge of the property with the following information:

- (a) name and address of the driver;
- (b) number of operator's license;
- (c) registration number of the striking vehicle.

Under the Highway Traffic Act there are certain things which must be done after an accident. If there is a death or injury or damage in excess of \$500, the driver must fill out an accident report. With the possibility of court proceedings at a later date, it is advisable to fill out the report even if the damage is less than \$500 to ensure the recording of the incident. Report forms may be obtained at any police station. While there is no specific time limit set on the making of the report, the Traffic Act states that it shall be done "forthwith" which would suggest a certain amount of immediacy. Anyone who knowingly makes a false statement on such a report can be fined and/or imprisoned for up to six months. If the driver, as a result of the accident, is incapable of making out a report, then someone else who was in the motor vehicle must make out the report. Where the driver is alone, and is incapable of making out the report, the driver must make out the report forthwith after becoming capable of making it.

Loss of Driver's License

In Alberta the accumulation of fifteen points or more under the demerit system will result in suspension of one's license. The first suspension is for a duration of one month. When the suspension is a second demerit point suspension within one year, the license is suspended for three months. In the case of a third suspension under the demerit system within two years, the license is suspended for six months. When a demerit point suspension has expired, the driver is reinstated with seven demerit points. As well, when two years have elapsed from the date of conviction for a traffic offence the points assessed for that conviction are removed. It should be noted that, other than satisfactory grounds that demerit points are incorrect, there is no appeal against a demerit point suspension. Keeping this in mind, drivers dangerously close to the fifteen point level should know that they can have two demerit points removed if they produce satisfactory proof of having successfully completed the Canada Safety Council Defensive Driving Course, or the Alberta Motor Transport Association Professional Driver Improvement Course, or the Alberta Motor Association Defensive Driving Course, or the Alberta Safety Council Traffic Clinic Course, or the Alberta Loss Control Limited Defensive Driving Course. This will not apply again until a two-year period has elapsed from the date the demerit points were removed.

Description of Offence	Demerit Points
Failing to remain at the scene of an accident	7
Speeding -- exceeding limit by more than 50 km/h	6
Careless driving	6
Racing	6
Failing to stop at a railway crossing	5
Failing to stop for a peace officer	5
Speeding -- unreasonable rate	4
Speeding -- exceeding limit by over 35 but not more than 50 km/h	4
Following too closely	4
Failing to stop for a school bus	4
Failing to report an accident	3
Speeding -- exceeding limit by over 20 but not more than 35 km/h	3
Improper passing	3
Driving on wrong side of road	3
Driving wrong way on one-way highway	3
Impeding passing vehicle	3
Failing to yield right of way to a vehicle	3
Failing to yield right of way to pedestrian	3
Failing to stop as directed by a traffic control device or as otherwise required	3
Proceeding when unsafe or unlawful after stopping	3
Stunting	3
Speeding -- exceeding limit by up to 15 km/h	2
Traffic lane violation	2
Failing to obey instructions of traffic control device	2
Impeding traffic by driving too slowly	2
Failing to signal	2
Improper turns	2
Improper backing	2

Insurance

Although chances are great that drivers will, at one time or another, be involved in a motor vehicle accident, few people have the financial ability to pay the damages now awarded in civil courts for negligence. Therefore we all turn to insurance as a method of sharing this risk. Drivers pay insurance premiums which are pooled and become available in case of an accident causing damage. It is compulsory, in Alberta, to carry a minimum of \$100,000 liability insurance. In actual fact, \$500,000 would certainly not be excessive.

Exercise 1

In the space provided at the left of each definition, write the term which corresponds with it. (There are more terms than you will need.)

hit-and-run
intersection
municipality
peace officer
pedestrian
highway

sidewalk
traffic accidents
traffic-lane
untravelled portion
chauffeur
owner

- _____

1. A longitudinal division of a highway divided into a strip wide enough to accomodate a single line of vehicles.
- _____

2. A member of the R.C.M.P. or the municipal police force.
- _____

3. A city, town or village.
- _____

4. A person on foot or in a wheel chair using a public highway for passage.
- _____

5. A term used when referring to a driver who flees after causing an accident, and neither the identity of the driver not that of the vehicle can be found.
- _____

6. A person in whose name a vehicle is registered.
- _____

7. Any person who drives a motor vehicle for wages.
- _____

8. Every road, street, lane, alley, driveway, parkway, or other place whether publicly or privately owned, that the public may use for the passage of vehicles.

Exercise 2

By placing the letter **T** or the letter **F** in the space provided at the left, indicate whether each of the following statements is true or false.

- _____ 1. Individuals driving a motor vehicle are required to carry their operator's license with them when they are in charge of the motor vehicle and must show it when asked to do so by a peace officer.
- _____ 2. Persons who hold an operator's license should not permit any other person to use or be in possession of their license.
- _____ 3. Every driver of a motor vehicle is required to produce the certificate of registration of the vehicle upon demand by a peace officer.
- _____ 4. The Criminal Code makes it an offence for any person, who having charge of a motor vehicle, drives recklessly, or in a manner which is dangerous to the public having regard to all circumstances of the case.
- _____ 5. Whenever any vehicle is stopped at a crosswalk to permit a pedestrian to cross a roadway, any other driver approaching from the rear must stop and not overtake the stopped vehicle.
- _____ 6. Where pedestrians are concerned, a cyclist has the right-of-way.
- _____ 7. If a pedestrian walks along a highway where there is no sidewalk, the pedestrian should walk in the same direction that the traffic is moving.
- _____ 8. If a person is riding on a highway at night, the bicycle should be equipped with a headlight in the front and a reflector at the rear of the bicycle.
- _____ 9. A person who is fourteen years of age and has obtained an operator's license of a learner's category (a learner's license) may drive on the highway if he is accompanied by a person eighteen years of age who holds an operator's license and who is sitting in the back seat, behind him, watching him.
- _____ 10. The driver of a vehicle that collides with an unattended vehicle and who cannot locate the person in charge of, or the owner of, the unattended vehicle must leave in a conspicuous place on or upon the vehicle collided with, a written notice giving his name and address, the number of his driver's license and the registration number of his vehicle. He should also contact the police.
- _____ 11. All levels of government have the power to pass and enforce laws which directly affect owners and drivers of motor vehicles.

- _____ 12. Where two vehicles are approaching an intersection at approximately the same time, it is the duty of the driver on the right to yield to the vehicle approaching from the left.
- _____ 13. A flashing amber light is similar to a stop sign.
- _____ 14. Under no circumstances may a gratuitous passenger sue the driver of the vehicle if an accident occurs and the passenger is injured.
- _____ 15. Where it can be shown that the plaintiff assumed the risk of accident, no action brought against the driver will be successful.
- _____ 16. Under no circumstances may liquor be carried in a motor vehicle.
- _____ 17. Under the provisions of the Liquor Control Act, police officers must obtain a warrant to search motor vehicles.
- _____ 18. Registration and insurance are required for snowmobiles even when operated on the owner's private property.
- _____ 19. The penalty for careless driving while operating an off-highway vehicle is the same as that for a motor vehicle under the Highway Traffic Act.
- _____ 20. Impaired drivers tend to make fewer visual scans of the environment.
- _____ 21. You can be convicted of impaired driving without ever having taken a breathalyzer test.
- _____ 22. If an impaired driver is involved in an accident, the driver's insurance company will void the insurance contract and refuse to pay any claims.

Exercise 3

Fill in the blank spaces in the following statements.

1. The _____ of a motor vehicle, as well as the _____, is liable for any loss or damage suffered by anyone due to the negligent operation of the motor vehicle.
2. The conduct of motor vehicles on the highway is governed by each of the _____.
3. For a charge of _____ to succeed the Crown must demonstrate that the driver was aware of the risk to the lives and safety of others and that the driver was completely unconcerned about them.
4. Leaving the scene of an accident is for all intents and purposes an admission of _____.
5. A _____ machine is usually used by the police to test the amount of alcohol in the bloodstream of a driver.
6. If individuals who have been issued a summons fail to appear, a _____ may be issued for their arrest.
7. A summons must be dated no later than _____ after the date on which the offence is alleged to have occurred.
8. In Alberta the accumulation of _____ points or more under the demerit system will result in the suspension of one's driving license.
9. The heavy involvement of government in motor vehicle offences should alert drivers to the fact that these offences are considered to be wrongs against the _____.
10. The operator of a motor vehicle should drive with due care and attention, and with reasonable _____ for others.
11. When a motor vehicle strikes a pedestrian or some property other than a moving vehicle, the burden of proof as to what caused the accident rests upon the _____.

- 12. An _____ accident is one in which the party accused of causing the accident could not possibly have prevented it by reasonable care and skill.
- 13. The _____ Act is legislation dealing with vehicles designed for cross country travel.
- 14. The Motor Vehicle Claims Act provides a fund from which money may be paid for injuries or property damage sustained when involved in an accident with an _____ driver.
- 15. Alcohol is a _____; its effects are similar to ether or chloroform.
- 16. In criminal proceedings a written accusation of some violation of the law is called an _____.
- 17. It is compulsory, in Alberta, for motorists to carry a minimum of _____ liability insurance.

Exercise 4

- 1. Give three examples of traffic offences which are serious enough to be tried under the Criminal Code.
 - (a) _____
 - (b) _____
 - (c) _____
- 2. Why is a high standard of skill and care demanded of all motorists?

- 3. Under the Highway Traffic Act what is the definition of a motor vehicle?

4. What is meant by the "test of the reasonable person"? (Use an example to illustrate your answer).

5. What must the owner prove to escape liability for the negligent operation of the owner's motor vehicle?

6. When is an employer liable for the negligent operation of a motor vehicle by an employee?

7. What must a gratuitous passenger prove to successfully sue the driver of the motor vehicle in which the passenger is riding if the passenger suffers injury in an accident?

8. Where there is evidence of gross negligence, what must the driver prove to be exempted from any liability to an injured passenger?

9. The defence of inevitable accident will fall into one of two general categories. What are they and describe each one?

1. _____

2. _____

10. For a charge of impaired driving to succeed must the vehicle actually have to be in motion? Illustrate your answer with an example.

11. For what possible reasons may the driver of a motor vehicle be questioned by a police officer?

(a) _____

(b) _____

(c) _____

12. What information is the driver of a motor vehicle required to give a police officer when requested to do so?

(a) _____
(b) _____
(c) _____
(d) _____

13. What should a driver do in the case of a collision with an unattended vehicle?

14. From their experience in dealing with such offences, the police say drivers leave the scene of an accident for one of three reasons. What are they?

(a) _____
(b) _____
(c) _____

15. What do the initials A.A.D.A.C. stand for?

16. How many individuals have two demerit points removed from their driving record?

LESSON RECORD FORM

3430 Law 30

Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

(If label is missing
or incorrect)

File Number

Time Spent on Lesson

Lesson Number _____

FOR SCHOOL USE ONLY

Assigned
Teacher: _____

Lesson Grading: _____

Additional Grading
E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

Lesson Recorded _____

Student's Questions and Comments

Apply Lesson Label Here

Name

Address

Postal Code

Please verify that preprinted label is for
correct course and lesson.

Teacher's Comments:

Correspondence Teacher

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

- (1) All pages are numbered and in order, and no paper clips or staples are used.
- (2) All exercises are completed. If not, explain why.
- (3) Your work has been re-read to ensure accuracy in spelling and lesson details.
- (4) The Lesson Record Form is filled out and the correct lesson label is attached.
- (5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do not enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.

Try to mail each lesson as soon as it has been completed.

When you register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

OFFENCES AGAINST THE INDIVIDUAL

The protection of people from personal violence and abuse is one of the most important functions of the criminal law. The manner or method that this violence can take ranges from the most serious, murder, to comparatively minor assaults. We will deal with some of the more prevalent types of these crimes here.

Homicide

The criminal law differentiates between two types of homicide (meaning to cause the death of another person); they are either culpable or not culpable, commonly called justifiable homicide. A homicide that is not culpable is a death that is caused by accident or in the course of self-defence, or one that is justified. Examples of justifiable homicide are:

- (a) a soldier kills an enemy soldier in battle,
- (b) a police officer kills a criminal who is attempting to escape lawful custody by the use of force, and
- (c) a patient dies while undergoing surgery for the removal of a blood clot on the brain.

Culpable homicide is the term used for the unlawful killing of another person. Culpable means to be guilty of, or to accept the blame, for some act. The most serious form of culpable homicide is, of course, murder.

Murder

Murder is committed by deliberately and unlawfully causing the death of another person. Murder is also committed by a person doing an unlawful act which the person should know is likely to cause death or by participating in certain actions which are inherently dangerous to human life. Some examples of such dangerous acts include:

- (a) kidnapping,
- (b) sexual assault,
- (c) arson,
- (d) armed robbery, and
- (e) performing an illegal operation.

The Criminal Code states the following:

Section 212. Culpable homicide is murder

- (a) where the person who causes the death of a human being
 - (i) means to cause death, or
 - (ii) means to cause bodily harm that the person knows is likely to cause death, and is reckless whether death ensues or not.

- (b) where a person, meaning to cause death to a human being or meaning to cause bodily harm that the person knows is likely to cause death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, not withstanding that the person does not mean to cause death or bodily harm to that human being; or
- (c) where a person, for an unlawful object, does anything that the person knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that the person desires to effect this object without causing death or bodily harm to any human being.

Section 213. Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit treason or an offence mentioned in section 52 (dealing with sabotage), piracy, escape or rescue from prison or lawful custody, resisting lawful arrest, indecent assault, forcible abduction, robbery, burglary or arson, whether or not the person means to cause death to any human being and whether or not the person knows that death is likely to be caused to any human being, if

- (a) the person means to cause bodily harm for the purpose of
 - (i) facilitating the commission of the offence, or
 - (ii) facilitating escape after committing or attempting to commit the offence,and the death ensues from the bodily harm;
- (b) the person administers a stupefying or overpowering thing for a purpose mentioned in paragraph (a), and the death ensues therefrom;
- (c) the person wilfully stops, by any means, the breath of a human being for a purpose mentioned in paragraph (a), and the death ensues therefrom, or
- (d) the person uses a weapon
 - (i) during or at the time the person commits or attempts to commit the offence, or
 - (ii) during or at the time of escape after committing or attempting to commit the offence,and the death ensues as a consequence.

Note that section 212 has the effect of making homicide murder if either the death was intended, or bodily harm which might be fatal was likely. Furthermore, it stipulates that it is still murder if the wrong person is killed by mistake. For example:

A man was separated from his wife and resented her family for taking sides with her against him. He particularly blamed his mother-in-law for his problems. He decided to kill her and went to her home and fired at her with his shot gun. However, he missed his mother-in-law but killed her husband. He was convicted of murder even though he missed his intended victim.

Manslaughter

This is the term used when a person kills another person unlawfully but without premeditation or planning beforehand. The law recognizes two types of manslaughter, voluntary and involuntary.

Voluntary manslaughter is the killing of another person while the killer lacks self-control.

Section 215.

- (1) Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.
- (2) A wrongful act or insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purpose of this section if the accused acted upon it before there was time for the accused's passion to cool.
- (3) For the purpose of this section the questions
 - (a) whether a particular wrongful act or insult amounted to provocation, and
 - (b) whether the accused was deprived of the power of self-control by the provocation that the accused alleges to have received,

are questions of fact, but no one shall be deemed to have given provocation to another by doing anything that the accused incited the other to do in order to provide the accused with an excuse for causing death or bodily harm to any human being.

Manslaughter is an offence which can be said to be included in a charge of murder. This means that although the prosecution may ask for a conviction for murder, the jury has the choice of finding the accused not guilty of murder, but guilty of manslaughter. To reduce the crime from murder to manslaughter there must have been sudden provocation which would be sufficient to cause an ordinary person to lose self-control and it must be acted upon immediately. If there is a time lapse between the provocation and the act of killing in which the person could regain self-control, the person will be convicted of murder. The maximum penalty for voluntary manslaughter is life imprisonment, but shorter terms are the rule rather than the exception.

Involuntary manslaughter is really a broad term as defined in the Criminal Code

Section 205.

- (5) A person commits culpable homicide when the person causes the death of a human being,

- (a) by means of an unlawful act,
- (b) by criminal negligence,
- (c) by causing that human being, by threats or fear of violence or by deception, to do anything that causes the other person's death, or
- (d) wilfully frightening that human being, in the case of a child or sick person.

To illustrate the type of act which would constitute involuntary manslaughter consider the following.

The accused struck the deceased man on the jaw. Unknown to him, the man had a severe bone disease which had already weakened the jaw bone greatly. The blow, which would ordinarily not cause severe injury to a healthy man, shattered the victim's jaw terribly and thrust a section of broken bone into the brain causing death.

The maximum penalty for involuntary manslaughter is life imprisonment but, depending on the circumstances, very light sentences are possible.

Abortion

The premature termination of a pregnancy, causing the loss of an unborn child, is illegal in Canada except under certain conditions. The Criminal Code states:

Section 251.

- (1) Everyone who, with intent to procure the miscarriage of a female person, whether or not she is pregnant, uses any means for the purpose of carrying out this intention is guilty of an indictable offence and is liable to imprisonment for life.
- (2) Every female person who, being pregnant, with intent to procure her own miscarriage, uses any means or permits any means to be used for the purpose of carrying out her intention is guilty of an indictable offence and is liable to imprisonment for two years.
- (3) In this section, "means" includes
 - (a) the administration of a drug or other noxious thing,
 - (b) the use of an instrument, and
 - (c) manipulation of any kind.
- (4) Subsections (1) and (2) do not apply to
 - (a) a qualified medical practitioner, who in good faith uses in an accredited or approved hospital any means for the purpose of carrying out the intention to procure the miscarriage of a female person, or
 - (b) a female person, who being pregnant, permits a qualified medical practitioner to use in an accredited or approved hospital any means described in paragraph (a) for the purpose of carrying out her intention to procure her own miscarriage.

If, before the use of those means, the therapeutic abortion committee for that accredited or approved hospital, by a majority of the members of the committee and at a meeting of the committee at which the case of such female person has been reviewed,

- (c) has by certificate in writing stated that in its opinion the continuation of the pregnancy of such female person would or would be likely to endanger her life or health, and
- (d) has caused a copy of such certificate to be given to the qualified medical practitioner.

Until 1969 abortion was illegal in Canada, although there were certain hospitals that performed abortions on women who had contracted "rubella" (German measles) during the first few months of their pregnancy. Under these circumstances there is a 50 per cent chance that a child will be born with a deformity, mental retardation or blindness. Before 1969, a person found guilty of performing an abortion received a sentence of up to life imprisonment.

In 1969, the Omnibus Bill was passed by the federal government which changed the abortion law, as well as laws affecting homosexuality and the distribution of birth control information. This law, in effect, legalizes abortion in cases in which either the life or health of the mother is endangered because of her pregnancy. It is now legal for a pregnant woman to apply for an abortion at an approved hospital. Every Canadian hospital has the right to establish an abortion committee and perform abortions. The committee is made up of three doctors who review any applications submitted and decide which women qualify for an abortion. Once the application is approved the abortion is performed by a doctor affiliated with that particular hospital. It is illegal for anyone to perform any type of abortion outside an approved hospital, even if the doctor is qualified.

Many people in Canada consider the existing law on abortion to be too vague. As a result, the law can be interpreted in many ways and cannot be applied in a consistent manner. There is confusion over what the law means when it states that "an abortion can be performed if the health of the mother is in danger because of her pregnancy." The word "health" is not defined in the Criminal Code, and could refer to either her physical or mental health. Abortion committees usually interpret the law to mean both the physical and mental health of a pregnant woman. But again, there is confusion about the definition of mental health. Is it right that an abortion committee can permit a woman to have an abortion, simply because she cannot provide adequately for the child, which would thereby affect her mental health? The law is not specific in defining its terms, and each abortion committee interprets the law in its own way. Some pregnant women are aware of these inconsistencies and look for a hospital that interprets the law in a way that will allow them to have their abortions.

Another criticism is that each hospital has the right to decide whether or not it will in fact establish an abortion committee. As a result certain hospitals do not have one, while consenting hospitals are often unable to deal adequately with the large number of applications and approved abortions. Most, if not all, of the criticisms of the present abortion laws are valid. It is evident that the existing law will have to be modified.

The current debate as to whether or not to legalize abortion at the request of the mother, centers around the question of "when does life begin?" As the law stands today, abortion does not fall under the heading of homicide since the life which is being taken does not have a separate and independent existence. A fetus becomes a human being when it has completely proceeded from its mother in a living state, whether or not it has breathed, has an independent circulation, or has had the umbilical cord severed.

Infanticide

This is the killing by a mother of her child who is not older than one year. This charge will only be laid if the mother is mentally disturbed as an after effect of childbirth; otherwise, she will be charged with murder. Infanticide is punishable by imprisonment for a maximum of five years.

Suicide

Suicide is the taking of one's own life and was included in the Criminal Code until 1972. Before then anyone who attempted to commit suicide could be prosecuted. Today in Canada it is still a criminal offence to aid anyone who is trying to commit suicide and is punishable by up to 14 years in prison.

Euthanasia and Terminally Ill Patients

Modern day advances in drugs and medical technology have made it possible for doctors to keep a person alive for indefinite periods of time, even though such patients are in a comatose state or in severe pain, and the medical opinion is that they will never be able to function for themselves again. As a result there is a conflict of opinion concerning the conditions under which a person should be allowed to die, and even on the subject of when a person should be declared legally dead. Some people want death to be defined as the moment brain death occurs. This would enable doctors to transplant healthy organs from the donor to a recipient quickly so that there would be a better chance of success. However, others maintain that the moment of death should be when the heart stops beating and not when the brain dies. These people admit that body organs might be damaged by the time a transplant could take place, but they argue that we are dealing with human lives and bodies, not machine parts. If there is a chance, however slim, that a person might be revived, every precaution should be taken to increase the person's chances of survival.

Proponents of euthanasia break it down into various categories:

1. Voluntary euthanasia is when patients specifically request that they be allowed to die.
2. Involuntary euthanasia is when patients have no say in the decision to end their life. This would involve a situation in which a patient is unconscious, with no hope of recovery. The doctor or nurse would administer a lethal dose of drugs, or withdraw life-support machines, allowing the patient to die.

3. Passive euthanasia is when a patient is never given life-saving drugs, or life-support machinery, and is permitted to die. This type of euthanasia would be practised when the patient's condition is considered hopeless and no amount of medical aid or attention would effect a cure.
4. Active euthanasia is the deliberate withdrawal of drugs or machines in order to bring about the death of an individual. It would also include a situation in which a patient is given a lethal drug.

Euthanasia and the circumstances that determine what constitutes euthanasia are not specifically defined in the Criminal Code of Canada. A person who commits euthanasia can be charged with criminal negligence, manslaughter or murder. Each case must, therefore, be decided individually according to the merits of the case itself and the circumstances surrounding it. Often there are circumstances under which the accused is found not guilty by a jury because it feels that the accused acted in the best interests of the sick person. But there are similar cases where the accused is found guilty of murder and sent to jail. Because there are no guidelines, decisions reached in euthanasia cases are often contradictory. Therefore it is of vital importance that the lawmakers debate the issue in order to clarify what exactly constitutes euthanasia and to set the penalties, if any, to be applied to people found guilty of it. It is unfair for relatives, nurses, doctors, etc., to be placed in a situation in which they risk criminal prosecution for committing an act that they regard as in the best interests of a suffering person.

Kidnapping and Abduction

Kidnapping consists of deliberately causing individuals, against their free will, to be confined or unlawfully sent out of Canada or of holding them for ransom. Abduction consists of taking or detaining a female person against her will with intent that she marry or have sex with her abductor or another man.

Section 247.

1. Everyone who kidnaps a person with intent
 - (a) to cause the person to be confined or imprisoned,
 - (b) to cause the person to be unlawfully sent or transported out of Canada, or
 - (c) to hold the person for ransom,is guilty of an indictable offence and is liable to imprisonment for life.
2. Everyone who, without lawful authority, confines, imprisons or forcibly seizes another person is guilty of an indictable offence and is liable to imprisonment for five years.
3. In proceedings under this section the fact that the person in relation to whom the offence is alleged to have been committed did not resist is not a defence unless the accused proves that the failure to resist was not caused by threats, duress, force or exhibition of force.

Section 248.

Everyone who takes away or detains a female person against her will, with intent

- (a) to marry her or to have illicit sexual intercourse with her, or
- (b) to cause her to marry or to have illicit sexual intercourse with a male person,

is guilty of an indictable offence and is liable to imprisonment for ten years.

Section 249.

1. Everyone who, without lawful authority, takes or causes to be taken an unmarried female person under the age of sixteen years out of the possession of and against the will of her parent or guardian or of any other person who has lawful care or charge of her is guilty of an indictable offence and is liable to imprisonment for five years.
2. For the purpose of proceedings under this section it is not material whether
 - (a) the female person is taken with her own consent or at her own suggestion, or
 - (b) the accused believes that the female person is sixteen years of age or more.

To illustrate this last section, consider the following case.

A young man of eighteen had a girlfriend who was fifteen. He told her he was going to B.C. to look for a job. She told him she was sick of school and her parents. She asked him to take her with him. They managed to hitch a ride to Vancouver and lived there together for ten weeks before the police found them. The man was charged with abduction even though it was the girl who had suggested it.

Assault

There are many degrees of assault, depending upon the intent of the person causing it and the results inflicted. Assault may be committed on its own, or in conjunction with another offence, such as a theft. Assault legally describes the applying of force intentionally to another person without consent. It is assault to threaten or attempt to apply force to another person while actually having the power to inflict it, or giving the victim reasonable grounds to believe that the aggressor can carry out this purpose.

Section 244.

A person commits an assault when, without the consent of another person or with consent, where it is obtained by fraud,

- (a) the person applies force intentionally to the other, directly or indirectly, or
- (b) the person attempts or threatens, by an act or gesture, to apply force to the other, if the person has or causes the other to believe upon reasonable grounds that the person has present ability to effect this purpose.

Common assault is punishable by up to six months in prison. If common assault causes injury to the other person, a two-year prison sentence is possible. If a weapon is used and it causes bodily injury, a maximum sentence of fourteen years can be imposed. This is true even if the wounding is unintentional.

Sexual Assault (Rape)

Under amendment to the Criminal Code in 1982, the offences of rape and indecent assault were eliminated. In their place are now three levels of sexual assault, these being:

1. sexual assault covers such offences as touching and fondling and are punishable by a maximum 10-year prison sentence. A minor offence in this category could result in a fine or six months in jail.
2. sexual assault with a weapon, with threats of bodily harm to a third party, or causing bodily harm to the complainant. Offences under this category could result in imprisonment for up to 14 years.
3. aggravated sexual assault to be invoked when a victim is maimed, will carry a maximum penalty of life imprisonment.

Offences Against Property

One of the main objects of criminal law is to protect the property rights of the public from interference or seizure by unscrupulous persons. The law has always considered property rights to be of prime importance in our society and very severe penalties are imposed upon those who violate these rights.

Theft

Theft consists of a person's taking something from its owner or rightful possessor without the owner's consent and with the intention of depriving the owner of it permanently or temporarily. The penalty will usually depend upon the person who committed the crime and for what purpose.

Section 294.

Except where otherwise prescribed by law, everyone who commits theft is guilty of an indictable offence and is liable

- (a) to imprisonment for ten years, where the value of what is stolen exceeds two hundred dollars, or
- (b) to imprisonment for two years, where the value of what is stolen does not exceed two hundred dollars.

Robbery

Robbery is theft with actual or threatened violence to a person or property. It is dealt with very harshly because it is assumed that without such violence persons would, of course, not allow themselves to be robbed.

Section 302.

Everyone commits robbery who

- (a) steals, for the purpose of extorting whatever is stolen or to prevent or overcome resistance to the stealing, uses violence or threats of violence to a person or property.
- (b) steals from any person and, at the time of the theft or immediately before or immediately thereafter, wounds, beats, strikes or uses any violence to that person,
- (c) assaults any person with intent to steal, or
- (d) steals from any person while armed with an offensive weapon or imitation thereof.

Section 303.

Everyone who commits robbery is guilty of an indictable offence and is liable to imprisonment for life.

Breaking and Entering

Breaking and entering used to be called "housebreaking" if committed during the day and "burglary" if at night (9 P.M. to 6 A.M.). The Criminal Code states:

Section 306.

1. Everyone who

- (a) breaks and enters a place with intent to commit an indictable offence therein;
- (b) breaks and enters a place and commits an indictable offence therein; or
- (c) breaks out of a place after
 - (i) committing an indictable offence therein, or
 - (ii) entering the place with intent to commit an indictable offence therein;

is guilty of an indictable offence and is liable

- (d) to imprisonment for life, if the offence is committed in relation to a dwelling house, or
- (e) to imprisonment for fourteen years, if the offence is committed in relation to a place other than a dwelling house.

It is also an offence just to be in possession of housebreaking instruments without lawful excuse. This crime is punishable by up to fourteen years in prison.

Arson

Arson is the act of deliberately setting fire to real or personal property with the intended purpose of harming someone physically or financially, or with intent to defraud. An arsonist should not be confused with a pyromaniac who sets fires to get a thrill from the excitement caused. A pyromaniac is mentally unstable and will be treated as such. An arsonist, on the other hand has a motive for starting a fire, usually some form of personal gain.

Section 389.

Everyone who wilfully sets fire to

1. (a) a building or structure, whether completed or not,
(b) a stock of vegetable produce or of mineral or vegetable fuel,
(c) a mine,
(d) a well of combustible substance,
(e) a vessel or aircraft, whether completed or not,
(f) timber or materials placed in a shipyard for building, repairing or fitting out a ship,
(g) military or public stores or munitions of war,
(h) a crop, whether standing or cut down, or
(i) any wood, forest, or natural growth, or any lumber, timber, log, float, boom, dam or slide,

is guilty of an indictable offence and is liable to imprisonment for fourteen years.

2. Everyone who wilfully and for a fraudulent purpose sets fire to personal property not mentioned in subsection (1) is guilty for an indictable offence and is liable to imprisonment for five years.

Under the following conditions it is no offence to set fire to something belonging to you, or to someone for whom you are properly acting, if no insurance is carried on it, precautions have been taken that no one can be harmed or injured thereby, and any necessary municipal permit to set the fire has been obtained.

Negligence with respect to fires can also bring harsh penalties. If a fire is caused wilfully or accidentally, and equipment which should be on hand to fight the fire such as extinguishers, hoses, axes, etc., are not present, then the person responsible for their absence (usually the owner) may be liable to a five year prison sentence. This is especially true when the fire results in loss of life or destruction of surrounding property.

Defamatory Libel

Defamatory libel consists of written words, drawings or other objects in permanent form which injure the reputation of a person. This is known as "punishing" a libel, and anyone who knowingly publishes statements which are false can be sentenced to a maximum of five years in prison. The punishment is two years in prison if the injurious statements are true or not known to be false.

A defence against a charge of defamatory libel is to show that it was published for the benefit of the public, and there must be a legitimate reason why the public should be aware of this information. If an article, photo, drawing, cartoon or any other object is published solely as scandal or deliberately to destroy a person's reputation, it is an offence, whether the story is true or not. Anyone who repeats a libel is equally guilty.

Note that it is not a crime to publish derogatory or critical comment and analysis concerning the public conduct of a performer or public official or personage, nor upon any literary or musical composition or work of art, provided that the criticism truly represents the critic's honest opinion.

Extortion

Extortion is committed by a person who, without reasonable justification and for personal gain, forces someone to do anything by actual or threatened violence, by threatening to publish defamatory libel, or by the threat of criminal accusations, whether the victim has actually committed some crime or not. Extortion has several other names, the most common being "blackmail" and "shakedown." Any person convicted of extortion can be imprisoned for up to fourteen years.

Fraud

To obtain money, goods, or credit under false pretences is commonly known as fraud. To be convicted on a charge of fraud it must be proven that:

- (1) a material misrepresentation has taken place and that the defrauded party acted upon it;
- (2) the defrauded party actually suffered a loss, and
- (3) the fraud was intentional or made with reckless disregard for the truth.

Fraud normally takes the form of some kind of falsifying of account books or official documents, but other common methods include the impersonation of someone else, keeping false accounts under assumed names, forging trade marks, and falsely labelling merchandise. The punishment for those convicted of fraud can range from fines on summary conviction to a maximum of fourteen years imprisonment.

Trespass

Trespass to land consists of going on somebody's land or placing or building something on it without consent. The consent could be by invitation or offer, or it could be implied from local custom or previous behaviour. A person's right to land extends not only to the surface area but also to the earth beneath it and the air space over it. Therefore, technically, anyone burrowing under a person's land or stringing wires or flying a private plane over the land commits trespass unless authorized to do so. Commercial planes and military aircraft are, of course, immune from prosecution in this regard.

The Criminal Code states further:

Section 40.

A person who is in peaceable possession of a dwelling house, and everyone lawfully assisting the person, is justified in using as much force as is necessary to prevent any person from forcibly breaking into or forcibly entering the dwelling house without lawful authority.

Section 41.

1. A person who is in peaceable possession of a dwelling house or real property, and everyone lawfully assisting the person, is justified in using force to prevent any person from trespassing on the dwelling house or real property, or to remove a trespasser, if no more force is used than is necessary.
2. A trespasser who resists an attempt by a person who is in peaceable possession of a dwelling house or real property, or a person lawfully assisting the person, to prevent the trespasser's entry or to remove the trespasser shall be deemed to commit an assault without justification or provocation.

Trespass to goods consists of injuring another person's property, whether deliberately or not, or using another's belongings without consent. The consent can be either expression or implied by past conduct. For example, the use of the goods may have been freely permitted in the past; or it is assumed that permission would not be refused because of similar favors extended in the past.

Exercise 1

Define the following terms. If you are unsure as to the meaning of any particular word, consult a dictionary.

1. abduction -
2. abortion -
3. arson -
4. assault -
5. culpable -

6. euthanasia - _____

7. extortion - _____

8. fetus - _____

9. fraud - _____

10. homicide - _____

11. manslaughter - _____

12. robbery - _____

13. pyromaniac - _____

14. premeditation - _____

15. infanticide - _____

16. unscrupulous - _____

17. surveillance - _____

Exercise 2

By circling the letter T or F in the space provided at the left, indicate whether each of the following statements is true or false.

- | | | |
|---|---|---|
| T | F | 1. The protection of people from personal violence and abuse is one of the most important functions of criminal law. |
| T | F | 2. It is still murder if the wrong person is killed by mistake. |
| T | F | 3. In Canada today, anyone who attempts to commit suicide can face criminal charges. |
| T | F | 4. Involuntary euthanasia is when patients specifically request that they be allowed to die. |
| T | F | 5. Assault is defined as the applying of force intentionally to another person without consent. |
| T | F | 6. Rape is no longer specifically mentioned in the Criminal Code. |
| T | F | 7. One of the main objects of criminal law is to protect the property rights of the public. |
| T | F | 8. The law makes no distinction between an arsonist and a pyromaniac. |
| T | F | 9. Slander consists of written words, drawings or other objects in permanent form which injure a person's reputation. |
| T | F | 10. A person's right to land extends not only to the surface area but also to the earth beneath it and the air space over it. |

Exercise 3

Fill in the blank spaces in the following statements; only one word is required for each space.

1. The most serious form of culpable homicide is _____.
2. _____ is the act of killing a person unlawfully but without premeditation.
3. A person who takes part in a mercy killing will be charged with _____.
4. The law has always considered _____ rights to be of prime importance in our society.
5. It is an offence just to be in possession of _____ instruments without lawful excuse.
6. A good defence against a charge of defamatory libel is to show that it was published for the benefit of the _____.
7. Extortion has several other names, the most common being _____ and _____.
8. Consent to trespass on another person's land can be given by _____ or implication.
9. Many people in Canada consider the existing law on abortion to be too _____.
10. Active euthanasia is the deliberate _____ of drugs or machines in order to bring about the death of an individual.

Exercise 4

1. Define the two types of homicide.

(a) _____

(b) _____

2. What must occur to reduce a crime from murder to manslaughter?

3. Why isn't abortion classified as a case of homicide?

4. What is the difference between robbery and theft?

5. Under what conditions can a person legally set fire to personal property?

6. What must be proven for a person to be convicted of fraud?

(a)

(b)

(c)

7. Why is a pyromaniac and an arsonist dealt with differently by the law?

Exercise 5

1. Michaels has a grudge against the railway which is trying to expropriate his land. He blows up a section of track to derail a train to scare them. As a result of the derailment, the train's engineer is killed. Michaels' intent was not to kill anyone. Is Michaels guilty of murder? Explain.

2. Arnold arrives home one evening to find his wife and Morgan, his business associate, kissing in the kitchen. They explain that they are simply rehearsing their parts for an amateur theatrical performance they are to appear in. Arnold doesn't believe it, but hides his true feelings. The next day Arnold shoots and kills Morgan. Arnold's defence was that he acted in the heat of the moment. Would Arnold be found guilty of murder or manslaughter? Explain.

3. A used car dealer sells a used car to a customer. He tells the customer that the car has only 10,000 km on it, when in actual fact it has more than 30,000 km. Is this fraud? Explain.

4. A man observed several snowmobilers on his property. He went out and informed them that they were on private property and ordered them to leave. They refused. The man took hold of one snowmobiler and began pulling him towards the highway. The snowmobiler hit the man. The snowmobiler was charged with assault. His defence was that the property owner had no right to lay hands on him. Will the snowmobiler be convicted of assault? Explain.

5. Selma bought a drug from Henry, which he told her would cause her to have a miscarriage. The drug did not work. Have Henry and Selma committed an offence? Explain.

Exercise 6

In two or three well-constructed paragraphs (approximately 200 words) discuss the following statement. Give your own opinions.

"Women should have sole control over their own bodies; and therefore should legally be entitled to an abortion if they want one."

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

LESSON RECORD FORM

3430 Law 30

Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

(If label is missing
or incorrect)

File Number

Time Spent on Lesson

Lesson Number _____

Student's Questions and Comments

Apply Lesson Label Here

Name _____

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*Please verify that preprinted label is for
correct course and lesson.*

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Assigned
Teacher: _____

Lesson Grading: _____

Additional Grading
E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

Lesson Recorded _____

Teacher's Comments:

Correspondence Teacher

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

- (1) All pages are numbered and in order, and no paper clips or staples are used.
- (2) All exercises are completed. If not, explain why.
- (3) Your work has been re-read to ensure accuracy in spelling and lesson details.
- (4) The Lesson Record Form is filled out and the correct lesson label is attached.
- (5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do not enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.

Try to mail each lesson as soon as it has been completed.

When you register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

DEFENCES

In every criminal case the accused person is presumed to be innocent until proven guilty. The Crown will attempt to establish this guilt by presenting evidence. After the Crown has shown why it believes the accused should be guilty, the defence has two alternatives:

1. it may decide to present no evidence on the grounds that the prosecution has not proved its case, or
2. it may use one of the defences discussed in this lesson.

With the exception, of double jeopardy, it is not necessary for the accused to specify what defence will be used. All the accused must do is plead not guilty to the charge. With the exception of insanity and double jeopardy, it is not necessary for the accused to prove this defence or satisfy a judge or jury that it is true. If the defence shows a reasonable doubt as to guilt, the accused is entitled to be acquitted. An accused can use as many defences as the nature and facts of the case permit.

Denial of the Charge

In most of the cases that go to trial the defence simply issues a general denial of the Crown evidence or a denial of one of its contentions. The defence will then present a witness or witnesses to substantiate this denial. For example:

John is charged with robbery. The Crown presents witnesses who testify that they saw John near the vicinity of the crime and that he was also seen running away. John presents witnesses who testify that he was in the vicinity, but was visiting friends at the time the crime occurred.

Alibi

This defence is one in which it is claimed that the accused was elsewhere at the time the offence was committed. This is a specific example of a general denial defence. It is generally believed that an alibi defence should be submitted as soon as possible, such as to the police shortly after arrest or at the preliminary hearing. An alibi that is given for the first time at trial when there is little opportunity for the prosecution to investigate it may be viewed with skepticism by the court.

Double Jeopardy

This defence is pleaded by the accused when they claim that they have been lawfully tried once before for the same crime and that they have been either acquitted or convicted. It is a legal safeguard against persecution and harassment by the authorities that persons cannot be placed in "jeopardy" twice for the same offence. This applies even if irrefutable evidence is submitted which proves their guilt after acquittal. This defence of double jeopardy is also known by its old Norman French names of "autrefois acquit" and "autrefois convict."

Young Offenders

The legislation contained in the Young Offenders Act is based on a number of principles. These are:

1. Young persons who commit offences should bear responsibility for their actions, although they need not always be held accountable in the same manner or suffer the same consequences for their behaviour as adults.
2. Society must be protected from the illegal behaviour of young persons.
3. Young people who commit offences require supervision, discipline and control, but they also have special needs and require guidance and assistance.
4. Alternative measures to court proceedings should be considered if consistent with the protection of society.
5. Young persons have rights and freedoms in their own right and a right to participate in the processes that result in decisions affecting them.
6. There should be the least interference possible with the rights and freedoms of young persons, having regard to the protection of society and the needs of young people. Finally, parents are responsible for the care and supervision of their children; therefore young persons should be dealt with within the family setting wherever appropriate.

The jurisdiction of the Young Offenders Act may be described in terms of both age requirements and offence committed.

With regard to age requirements, the legislation defines a "young person" as a person who is or appears to be, in the absence of evidence to the contrary, twelve years of age or more, but under eighteen years of age. The Government of Alberta has passed a provincial Young Offenders Act. This was done to bring Alberta laws in line with federal laws. The provincial Young Offenders Act states that a "young person" is one who is twelve years of age but under eighteen years of age.

With regard to the offence committed by the young person, the federal Young Offenders Act covers only those young persons charged with specific offences against the Criminal Code and other federal statutes and regulations. It does not cover offences against provincial laws which deal with things like traffic and liquor violations, or municipal by-laws. However, Alberta legislation provides for such offences. What has been called Provincial Court, Juvenile Division, has now become the Youth Court.

The Young Offenders Act allows the use of alternative measures, that is, alternatives to court proceedings. These include community service, special education programs, counselling and agreements for restitution, that is, making up for damages to the victim. Every young person who breaks a law, therefore, need not appear in court. For less serious offences, alternative measures to the formal court process may be preferable. While the use of alternative measures is not meant to be a substitute for judicial proceedings, it provides additional options for dealing with young offenders.

The Act contains various safeguards to protect young people who enter these programs. These consist of the following:

1. The young person must accept responsibility for the offence he or she is alleged to have committed.
2. The young offender must be fully informed of the alternative measures, and have voluntarily agreed to participate in them.
3. He or she must be advised of his or her right to counsel and be given the opportunity to consult with counsel before consenting to participate in alternative measures.
4. Alternative measures cannot be used in any case unless there exists sufficient evidence to proceed with the prosecution of the offence.

The young person's rights are protected from the moment of arrest. Under the federal legislation, access to legal counsel is guaranteed at critical stages of the proceedings including during the trial, a review of the "disposition" and a transfer to adult court. Disposition refers to the sentencing or other treatment of an offender. In addition, young offenders must be informed of their rights, in the same way as adult offenders.

Parents must be notified of all proceedings, encouraged to attend proceedings and if necessary, ordered to do so. When the whereabouts of the parents are unknown, notice may be given to an adult friend or relative of the young offender. Parents or notified adults are required to attend court. If they refuse, the Youth Court may order their attendance. If they fail to attend, they may be found in contempt of court and fined or jailed.

Under the Young Offenders Act, court hearings are open to the public, but may be closed in special circumstances.

Finally, before making a decision, the Youth Court judge may order a "pre-disposition" report. This report is an assessment of the young offender's circumstances, including age, attitude, behaviour, willingness to make amends, future plans to alter conduct or to participate in alternative measure programs, previous conflict with the law, history of involvement in alternative measure programs, school records, employment record, the relationship between the young person and his parents, the degree of control and influence of the parents over the young person, and an appraisal of the programs and facilities available to the court to meet the young person's needs. The Youth Court judge must ask for a pre-disposition report if he or she is considering transferring the young offender to adult court, or sentencing a young offender to custody. Custody means physical detention or imprisonment in a provincial young offenders institution.

Under the Young Offenders Act, young people have the same right to bail as adult offenders. Detention of young offenders must be separate and apart from adult offenders. With regard to bail applications, the rules and criteria set out in the Criminal Code also apply to young offenders. Under the Act, therefore, a young offender will be released on bail depending on whether he or she will appear in court and whether

he or she must be put into custody for the protection of the public. The Youth Court has the power to release a young person into the care of a responsible adult when it appears that the adult can exercise control and guarantee the young offender's subsequent attendance in court.

In addition, there is a provincially operated pre-trial release program which enables eligible young persons to be released to their parent's or guardian's homes while awaiting trial. Prior to release, consideration will be given to the nature of the offence, past behaviour and guidance available to the young offender. The Youth Court may direct that the young person be supervised by a probation officer. If the young person fails to comply with any directions given by the Youth Court judge, he or she may be placed in custody to await trial.

Young offenders will be transferred to adult court when they have committed a serious offence, such as breaking and entering, manslaughter, armed robbery or sexual assault. The young offender must be fourteen years of age or older. An application for such a transfer can be made by either the Crown prosecutor or the young offender. Transfer to adult court may be preferable in cases where a particular adult institution offers, for example, better education and training programs than those offered in youth facilities.

In considering an application to transfer a young offender to adult court, the Youth Court judge must consider such factors as the seriousness of the alleged offence, the circumstances in which it was allegedly committed, the age, maturity, character and background of the young offender, and, the availability of treatment or correctional resources. A young offender must be transferred to adult court before his or her guilt or innocence has been decided.

The forms of punishment issued by adult court are much more severe than those issued by Youth Court. Therefore, transfer to adult court is a last resort for cases where it is the only way to protect society and to meet the special needs of the young offender.

The Young Offenders Act provides a variety of sentencing options. This allows the Youth Court judge to take into account the special circumstances and needs of the young offender, the rights and needs of victims of crime, and the need to protect society. The sentences available are precisely defined.

The following are the dispositions available:

1. Absolute discharge (where a young offender has pled guilty or been found guilty, he or she is held not to have been convicted of the offence. This means that the young offender will not be exposed to any forms of punishment although he or she will still have a criminal record).
2. Maximum fine of one thousand dollars.
3. Monetary compensation or restitution to the victim.
4. Compensation to the victim by way of personal service.

5. Community service.
6. Probation for a maximum of two years.
7. Custody ("open" or "secure" — see below for explanation)
 - (i) Maximum of two years for any given offence
 - (ii) Maximum three years for any offence where an adult offender would be liable to life imprisonment or for a combination of two or more offences.
8. Any other disposition left to the discretion of the Youth Court judge which would be in the best interest of society and the young offender, for example, the youth might be prohibited from having dangerous firearms.

Many of these dispositions are designed to allow the community to participate in and benefit from the rehabilitative process of the young offender.

When a young offender is committed to custody, he or she will be admitted to a specially designated residential facility from which his or her access to the community is restricted. Under the Young Offenders Act, a young offender may be committed to either "open" custody or "secure" custody.

"Open" custody means admission to a community residential centre, group home, child care institution, forest or wilderness camp, or similar place. "Secure" custody will only be ordered when it is necessary for the protection of society having regard to the seriousness of the offence and the needs and circumstances of the young offender. This restraint usually consists of placing the young offender behind physical barriers. Normally the young offender must be at least fourteen years of age, and have committed an indictable offence punishable by at least five years imprisonment.

Under the Young Offenders Act, there are two types of temporary release. The first is a temporary leave of absence for not more than fifteen days where it is necessary that the young person be absent, with or without escort, for medical, compassionate or humanitarian reasons. This leave may also be granted for the purpose of rehabilitating the young offender or reintegrating him into the community. The second type of temporary release is a day release so that the young person may attend school, continue employment or take part in a self-improvement program.

The review of a disposition where young offenders are concerned is very important. The review procedure under the Young Offenders Act deals not only with default on dispositions, (that is, the young offender did not comply with the judge's order) but also with changes in dispositions. The review can be initiated by the young offender, the Crown prosecutor, the institution or any interested parties (for example, parents).

A non-custodial disposition may be reviewed on application by any person involved in the case. The Youth Court may uphold the original disposition, end it or change its terms, but it cannot make the disposition more severe.

The disposition may be reviewed and made more severe (up to a maximum of six months in custody) where the young offender has wilfully failed or refused to comply with its terms or has attempted to escape from custody.

Custodial dispositions must be reviewed at least once a year where the young offender has been committed to custody for more than one year. However, any person involved in the case may make an application for review at any time as long as there are sufficient grounds. A disposition may be reviewed on the grounds that the young offender has made sufficient progress to justify a change in disposition, that the circumstances which led to the custody order have changed substantially or, that new services or programs are available that were not available at the time of disposition.

Under the Young Offenders Act, fingerprints and photographs can be taken *only* where the young offender has committed an indictable offence. A young offender may be fingerprinted and photographed under the same circumstances that an adult can legally be fingerprinted or photographed. In other words, if a person is arrested and charged with an indictable offence, the police have the right to fingerprint and photograph him or her. If released on an appearance notice, that is, a promise to appear, a person can be required to appear at a given time and place for fingerprints and photographs. If the person does not appear at that time, a warrant can be immediately issued for his or her arrest.

Any fingerprints and photographs must be destroyed if the young person is acquitted or the charge is withdrawn, or if no proceedings are taken against him or her. When a young person is found guilty of the offence, the fingerprints and photographs may be kept by the police force.

With respect to criminal records, where a young offender has completed his sentence and committed no further offences for two years or five years, depending on the seriousness of the offence, his or her criminal record will be destroyed automatically. Where the young offender has committed a summary offence, he or she must wait two years before the record will be destroyed. For indictable (more serious) offences, a period of five crime-free years must pass before the young offender's record is destroyed. When a young person is charged with an offence and is acquitted, or the charges are withdrawn, or no proceedings are taken against him or her for a period of six months, all records must be destroyed.

Insanity

Persons charged with a crime in which the guilty intention is an essential ingredient, can escape punishment if they can prove they had no criminal intent. One way of doing this is to convince the court that they were insane at the time they committed the act. The Criminal Code lays down the test of insanity:

1. No persons shall be convicted of an offence in respect of an act or omission on their part while they were insane.
2. For the purpose of this section persons are insane when they are in a state of mental incapacity or have a disease of the mind to an extent that renders them incapable of appreciating the nature and quality of an act or omission or of knowing that an act or omission is wrong.

3. Persons who have specific delusions, but are in other respects sane, shall not be acquitted on the ground of insanity unless the delusions caused them to believe in the existence of a state of things that, if it existed, would have justified or excused their act or omission.
4. Everyone shall, until the contrary is proved, be presumed to be and to have been sane.

For persons to be convicted of a crime in Canada then, there must be an appreciation of the factors comprising the act and a mental capacity to measure and foresee the consequences of the act. It is possible for individuals to understand what they are doing, yet be unable to realize the significance of their actions in relation to themselves and others.

The burden of proving insanity is on the accused and this burden rests on a balance of probabilities — on the preponderance of evidence. Doctors who have not examined the accused before the trial cannot be asked to give an opinion on the mental health of the accused, but if the facts of the case are not in dispute, then doctors can be asked to give their general opinion.

Persons found to be insane are declared not guilty. They are placed in a mental institution upon an order signed by the Lieutenant-Governor of the province. Their stay there is usually for life unless proof of a permanent cure can be submitted. Because of this serious consequence to a successful plea of insanity, it is very rarely used in any but the most serious cases, such as murder.

Automatism

Automatism is involuntary movement of the body; an act which is done by the muscles without any control of the mind. Examples of automatism are a spasm, a convulsion, sleep-walking, and acting under the effects of a concussion. The courts have declared that automatism is not a valid defence if the accused was suffering from amnesia, acting under an irresistible impulse, drunkenness, insanity or black-out which is unsupported by medical evidence.

There are two types of automatism, insane and non-insane. Insane automatism is any automatism resulting from disease of the mind—for legal purposes it is treated as the defence of insanity. The defence of automatism is restricted to non-insane automatism and if successful results in a complete acquittal. Non-insane automatism is defined as unconscious involuntary behaviour in which persons, though capable of action, are not conscious of what they are doing.

Intoxication

In early common law voluntary intoxication was regarded as being an aggravating factor to crime rather than a defence. However, the present rule is that voluntary intoxication, whether by alcohol or by drugs, will constitute a defence if either of two situations can be proved:

1. The intoxication triggers a disease of the mind which falls within the insanity requirements as set down in the Criminal Code. The defence is then insanity and not intoxication.
2. The definition of the crime requires that a specific intent must be proved as an essential ingredient and the accused was so drunk that the accused was incapable of forming such intent.

The following example will illustrate this last point:

Morgan is accused of murder in the shooting death of Rawlins. The evidence shows that Morgan was in an advanced state of intoxication at the time of the incident. This fact made it questionable as to whether or not Morgan actually intended to kill Rawlins or merely to cause him bodily harm. Because this doubt concerning his specific intent existed, Morgan was acquitted of murder but convicted of manslaughter. Manslaughter requires only a general intent.

Necessity

The defence of necessity must be distinguished from the defence of compulsion where persons are forced to go through the motions of *actus reus* without any choice on their part. Necessity involves the situation where the accused does have a choice between two courses of action: one means breaking the criminal law and the other means suffering such great harm or allowing another to suffer such harm that one might feel justified in breaking the law to avoid it. The harm sought to be avoided generally must be physical and immediate. When the accused breaks the law to avoid harm, the accused may inflict harm either on the original aggressor or on an innocent person. The fact that the accused may go to the aid of another in danger, or is forced of necessity to harm an innocent person, distinguishes this defence from self-defence. The following illustrates the defence of necessity.

The accused killed his father who was attacking his mother and threatening to kill her. The accused was found not guilty of murder because necessity excused the murder charge. The court held that where a person who honestly believed, and had reasonable grounds for the belief, that a close relative was in imminent peril of life, and the only possible and reasonable means of saving life will cause death to the assailant, the law will excuse the accused from homicide.

Compulsion

Compulsion can either be a compulsion of the body or compulsion of the will. Compulsion of the body is a defence because although the body is being forced to commit the *actus reus*, it is not done voluntarily. Compulsion of the will, as in necessity, involves a choice between evils, but the person who compels must be present when the offence is committed.

Consent

Consent will provide a defence to an offence where the acts of the accused were not likely or were not intended to do bodily harm to another. Consent is no defence to a murder charge, but will be a defence to homosexual acts between adults in private, and sexual assault. The consent must be genuine and not fraudulently obtained. The Criminal Code states that the consent to sexual assault is nullified if the consent:

- (i) is extorted by threats or fear of bodily harm,
- (ii) is obtained by impersonating her husband, or
- (iii) is obtained by false and fraudulent representations as to the nature and quality of the act.

The Code further states that the consent of a child under 14 years of age is no defence.

Self-Defence

This defence is governed by the Criminal Code, its main principle being that the force used must not be unreasonable in the circumstances.

1. Persons who are unlawfully assaulted without having provoked the assault is justified in repelling force by force if the force used is not intended to cause death or grievous bodily harm and is no more than is necessary to enable persons to defend themselves.
2. Persons who are unlawfully assaulted and who cause death or grievous bodily harm in repelling the assault are justified if
 - (a) they cause it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made, and
 - (b) they believe, on reasonable and probable grounds, that they cannot otherwise preserve themselves from death or grievous bodily harm.
3. Persons are justified in using force to defend themselves or anyone under their protection from assault, if they use no more force than is necessary to prevent the assault or the repetition of it.

The Criminal Code also entitles individuals to use reasonable force to defend their property. The key words here are **reasonable force**. Although the court will allow some error of judgment, the use of excessive force will result in a conviction.

Defence of Dwelling

This defence extends the principle of self-defence to the home and entitles persons to defend against entry by trespassers. The principle of reasonable force, however, continues to be the primary consideration.

1. Persons who are in peaceable possession of a dwelling house, and anyone lawfully assisting them or acting under their authority, are justified in using as much force as is necessary to prevent any person from forcibly breaking into or forcibly entering the dwelling house without lawful authority.
2. Persons who are in peaceable possession of a dwelling house or real property and anyone lawfully assisting them or acting under their authority are justified in using force to prevent any person from trespassing on the dwelling house or real property, or to remove a trespasser therefrom, if they use no more force than is necessary.

Provocation

Provocation is a very limited defence since it applies only to reduce murder to manslaughter. Provocation is described by the Code as a wrongful act or insult that is of such a nature as to be sufficient to deprive ordinary persons of the power or self-control if the accused acted upon it suddenly and before there was time for their passions to cool.

Example:

The accused, an Italian immigrant, received news that his wife, who remained in Italy, had been unfaithful to him. Upon arrival in Canada the wife admitted her adultery to the accused. The accused strangled her. The defence contended that there was sufficient provocation to reduce the charge from murder to manslaughter. The court ruled that while a confession of adultery is normally provocation, the confession must strike upon a mind unprepared for it so that it takes the understanding by surprise and sets the passions aflame. But here the accused knew of the facts of his wife's confession for a long time before the confession took place. Unless the wife revealed something new to taunt the accused, it could not be said the provocation was sudden within the meaning of the Criminal Code.

Search

The Criminal Code authorizes a Justice of the Peace to issue a warrant to the police giving them the power to search premises and seize articles found. Before issuing the warrant, the police must show that there are good grounds for believing that the premises contains anything used, or will be used, in the commission of a crime, or contains any evidence of an offence.

The search warrant empowers the police to search the specific place named. If the address is incorrect, a person has the right to refuse the search. The police must carry out the search on the date shown on the warrant, during the hours of

daylight, unless the warrant states "at anytime." The police may seize the items they were searching for, or any other illegal goods found on the premises. If a person refuses to admit police who have a valid search warrant, they are permitted to break in.

Take note that a search warrant permits the police to search the place - not a person. However, once the police are inside a place, if it then appears that there are reasonable grounds for suspecting that a person has possession of an illegal weapon or drugs, they may then search the person or anyone found in that place. Ordinarily, a person may be searched only after having been arrested.

To deliver a search warrant quickly in an emergency situation, it is possible for the police to get warrants through telephone or telecommunications with a judge of the Provincial Court. These so-called " telewarrants " are as valid as those obtained by physically going before a judge and requesting that a warrant be issued.

Arrest

A person who on reasonable grounds believes that an indictable offence has been committed may lay an information (a charge) in writing and under oath before a justice. The justice, who hears the allegations of the informant in the absence of the accused, may issue a warrant of arrest ordering that the accused be arrested and brought before the justice to answer the charge. The specific charge against the accused must be shown on the warrant and the accused has a right to read it. The Criminal Code places a duty on officers who are making an arrest pursuant to the warrant to have the warrant with them and, where possible, to produce it when requested to do so. A police officer, to whom the warrant is directed, may arrest the accused provided that the accused is found within the territorial jurisdiction of the justice who issued the warrant or anywhere in Canada if the accused is being pursued by police. Where an accused leaves the territorial jurisdiction where the warrant is valid, a justice, in the jurisdiction where the accused is believed to be, may endorse the warrant and thereby authorize police in that jurisdiction to arrest the accused. Within 24 hours of the arrest, whether it is with or without a warrant, the accused must be taken before a justice.

Anyone may arrest, without a warrant, a person who is found committing an indictable offence. Anyone may arrest without warrant a person on reasonable and probable grounds who is believed to

- (a) have committed a criminal offence, and
- (b) is escaping from and pursued by persons who have lawful authority to arrest that person.

If a person owns or is in lawful possession of some property, that person may arrest without warrant any person(s) who is committing some criminal offence in relation to that property. Private citizens should exercise the utmost caution in making an arrest, for they may be exposed to a civil law suit if the arrest is found to be illegal. A private citizen can easily be mistaken about the facts or the legal ingredients for the commission of the offence.

Police officers have been given wide powers of arrest under the Criminal Code. A police officer may arrest without a warrant:

1. a person who has committed an indictable offence;
2. a person, who, on reasonable and probable grounds, is believed to have committed or is about to commit an indictable offence; or
3. a person, whom the officer finds committing a criminal offence.

Both the Criminal Code and the Canadian Charter of Rights and Freedoms have given arrested persons the right to be promptly informed of the reason for their arrest. However, this right does not apply in situations where it would be impractical or useless; such as in cases

1. where the suspect violently resists custody.
2. where the reason for arrest is obvious to the suspect, or
3. where the suspect would be unable to understand the reason because of insanity or intoxication.

Illegal Arrest

A person who makes an illegal arrest may be liable for prosecution for common assault or false imprisonment. An illegal arrest will also expose the arrester to civil liability in damages for false imprisonment and assault.

A person has the right to resist an illegal arrest, however, since the legality of an arrest may be difficult to discern, a person would be better advised to submit to custody and seek compensation after it has been admitted or proven that the arrest was illegal. A person who resists lawful arrest may be found guilty of obstructing a police officer in the course of duty or assaulting a person with intent to resist lawful arrest.

Issuance of Appearance Notice Instead of Arrest

Police have a duty not to arrest every person whom they have decided to charge. Where the accused is charged with a summary offence, an offence which may be summary or indictable, or an indictable offence under section 483 (mandatory trial by provincial court judge), police cannot arrest unless they can show that it is necessary. In deciding whether an arrest is necessary a police officer must apply the following two tests.

- (a) Can the public interest be served without an arrest? In making this decision, one must consider all the circumstances and particularly the need to establish the accused's identity, to obtain or preserve evidence, and to prevent continuation or repetition of the crime or commission of another crime.
- (b) Are there reasonable grounds to believe that an arrest is necessary to ensure the accused's appearance in court?

Where the officer decides not to arrest, the officer can issue an appearance notice which requires the suspect to appear before the court for trial on a certain date.

Arrest of Wrong Person

The Criminal Code provides that where individuals who are authorized to execute a warrant to arrest believes, in good faith and on reasonable and probable grounds, that the person arrested is the person named in the warrant, they are protected from criminal responsibility to the same extent as if that person were the person named in the warrant. Persons called upon to assist individuals authorized to execute the warrant who believe that the person whose arrest they are called upon to assist is the person named in the warrant, and every keeper of a prison who has this belief, are protected from criminal responsibility to the same extent as if that person were the person named in the warrant.

The Right to Remain Silent

A person has a right to remain silent when stopped and questioned by a police officer. If the officer does not state a lawful reason for arrest, the person has the right to walk away. If the police officer states a lawful reason for an arrest and arrests the person, the accused must accompany the officer, but need not say anything. It is important to note that there are situations in which suspected or arrested persons may wish to make statements to police officers. It is usually advantageous to an accused person to make a statement upon arrest for possession of stolen property. The fact that an explanation was given at the time of arrest will weight heavily in the accused's favor in court.

If the suspected person is a juvenile, the accused should inform the police of this fact. In Youth Court bail is easier to obtain and penalties are more lenient.

Persons charged with a minor offence may wish to give the police information, such as their name, address, occupation, and length of residence in the community, to secure their release by an appearance notice and to save the trouble of arrest.

Procedure Following Arrest

We have already seen that arrested persons have the right to remain silent, although it may be wiser not to assert this right in certain circumstances, such as when the charge is possession of stolen property. There are several other matters arrested persons should know.

After a legal arrest, the police have the right to search suspects for weapons they might use to escape or harm themselves or others and for any personal effects that may afford evidence of the offence which is alleged. In one such case, R.C.M.P. officers, believing the accused had narcotics in his possession, seized the accused and put their hand into his mouth to recover a drug they assumed was there, but did not find. The narcotics were found in the accused's car, which was nearby. The accused resisted the search, was charged with assaulting a police officer in the execution of his duty, and was convicted. His appeal was dismissed on the basis that the search was justifiable as an incident of arrest.

Section 10(b) of the Charter of Rights and Freedoms gives an arrested person the right to retain and instruct legal counsel without delay. This necessarily implies the right of an accused person under arrest to have a telephone call to consult counsel. The right to instruct counsel also carries with it the right to consult with counsel in private. Even if the consultation with counsel is by telephone in a police station, the police must grant the accused person the right to consult with counsel privately.

The Identification of Criminals Act provides that any person in lawful custody, charged with or convicted of an indictable offence, may be fingerprinted and photographed. It permits police to use force if necessary. The question arises as to whether offences which are summary or indictable at the option of the prosecutor are summary or indictable for purposes of the Identification of Criminals Act. These should be treated as indictable. It seems likely that if the accused resisted fingerprinting and photographing on charges such as possession of marijuana, which could be summary or indictable, the prosecutor may opt to proceed by indictable offence, if for no other reason than simply to protect the police.

If an accused is charged with a summary offence, such as causing a disturbance or common assault, the police have no right to take fingerprints and photographs and the accused is entitled to resist such an attempt. If the police use force, there would be a remedy in civil law for damages or in criminal law by laying a charge of common assault. In fact, police often do take fingerprints and photographs in cases where the charges are summary. In addition, in many drug cases, for example, the prosecutor proceeds by summary offence, and the fingerprints have been taken as though it were an indictable offence. The R.C.M.P. identification branch in Ottawa is the depository for the fingerprints and photographs, and they take the position that individuals are not entitled to the return of their fingerprints or photographs even if they are taken without statutory authority. However, where persons are acquitted the accused can apply for destruction of their fingerprints and photographs. The R.C.M.P. will usually grant a request for destruction. If the prints and photos were taken by a police force other than the R.C.M.P., the request must be made to that force, and the R.C.M.P. will return the prints and photos to that force for its own disposal or destroy them at the request of that force.

An officer who decides to arrest a person may release the accused at the police station. Under section 452, the arresting officer has authority to release any person charged with a section 483 offence (absolute jurisdiction of provincial court judge), a summary offence, an offence which may be summary or indictable, or an offence carrying a maximum jail term of five years or less. In deciding whether to release the accused, the officer must decide whether continued detention is necessary to preserve evidence, protect the public, establish the identity of the accused, or ensure that the accused will show for court. If it is decided to release the accused, the officer can issue an appearance notice or arrange to have a summons issued.

If the arresting officer decides to keep the accused in custody, the senior officer in charge must consider whether detention is necessary and has the power to release the accused on summons, promise to appear, or a recognizance (promise to pay) \$500 without deposit. If the accused lives more than 100 kilometers away, the senior officer can demand a cash deposit up to \$500. The senior officer can also release a person arrested on a warrant if the judge who issued the warrant authorizes such release.

Where a person arrested with or without warrant is not released in any of the above-mentioned ways, the accused must be taken before a judge within 24 hours, or as soon as possible. Then the accused has a right to a judicial interim release or cause must be shown why this should not be granted and instead bail must be posted or no release granted. Where the offence charged carries a maximum penalty of seven, ten, fourteen years, or life imprisonment, the matter of bail will always reach this stage.

Where formerly suspects had to justify to the court that they should be released on bail by showing that the offence was not very serious, that they had no previous criminal record, that they lived in the community and that they would be certain to turn up for their trial, now it is the prosecutor who must satisfy the court that the accused will not turn up for trial or that they will commit another offence if permitted out on bail. The prosecutor must prove that the accused should be kept in custody or else the accused will be released by the court.

The Legal Profession

In England, the legal profession is divided into two groups, solicitors and barristers. Solicitors are "office" lawyers. They spend almost all their time interviewing clients and carrying on the legal aspects of business and family affairs. They look after the drafting of wills, deeds, and contracts, the incorporation of companies, arrangements for adoption of children, and other domestic documents. They also prepare cases for trial, draft pleadings, interview witnesses, and make copious notes for trial. In addition, they argue cases in some of the lower courts. Barristers only take briefs, that is, cases handed to them by solicitors, to be presented in court. They are a much smaller group and have their offices mainly in London around the central law courts.

In Canada, from very early times, lawyers became both barristers and solicitors. Lawyers are qualified to carry on the duties of both professions and often do, especially in smaller cities and towns. In larger cities, lawyers tend to specialize and to be either "office" lawyers or "litigation" men. Under the civil law of Quebec the profession is divided in approximately the same way as in England. Quebec has notaries (solicitors) and advocates (barristers). In the United States the distinction has broken down completely. A lawyer is not called "barrister and solicitor" as he is in Canada, but simply an attorney.

The legal profession is organized on a provincial basis in Canada. Each province has its own "bar" (barrister's society), and by provincial statute one must be a member to practise law. Membership in one provincial bar does not permit a lawyer to practise in another province. A lawyer must meet the standards and pay the fees of any other provincial bar before practising in that province. A member of any provincial bar, however, may appear before the Supreme Court of Canada.

No person may practise law in Alberta unless qualified through strict undergraduate training and rigorous bar admission procedures. A committee of prominent and experienced lawyers, known collectively as the Benchers of The Law Society of Alberta, may judge a lawyer's conduct and, if necessary, impose punishments at any time upon the receipt of complaints, including withdrawing the privilege to practise law.

Of course, individuals may appear for themselves in the courts, but only a duly qualified lawyer may represent people, or make a practice of giving legal advice. This restriction is for the protection of the public. While a non-lawyer may have a good deal of knowledge about a particular legal subject, it is most unlikely that an untrained person can be familiar with enough law to give the comprehensive overall view required by most individuals with legal problems.

One of the important benefits to be obtained by having a lawyer is that the lawyer can take an objective view of the problem. The lawyer is not emotionally involved with it. The disinterest of the lawyer in conducting a case and the coolness of thought can rarely be paralleled by individuals whose self-interest may cloud their argument, and occasionally their reason. There is a great deal of truth in the old adage, "He who represents himself has a fool for a client."

A lawyer generally makes only a nominal charge for a first interview with a prospective client. Only when actual time is spent working on a case will a fee be charged. Then it will be based on one of the following:

1. In appropriate cases in accordance with the suggested rate (tariff) of The Law Society of Alberta, which is always available in any lawyer's office for perusal by clients,
2. If the tariff lacks an appropriate guideline then on the basis of an agreed hourly charge.
3. In occasional cases, on a percentage basis, when a monetary settlement is involved.

Discuss the fee with your lawyer at the beginning and, if not satisfied, change lawyers.

The legal profession requires a high standard of conduct from its members based on the perception that faithfulness to the client is a lawyer's first duty. The Law Society of Alberta stands ready at all times to maintain high standards of conduct and may censure, suspend, or disbar lawyers who are lax in observance of their professional obligations. Moreover, the courts too, have wide powers to deal with improper behaviour.

Legal Aid

The Canadian Charter of Rights and Freedoms guarantees everyone the right to legal counsel on a criminal charge. If a person cannot afford a lawyer, an application should be made for legal aid. Legal aid is designed to ensure that no one shall be denied the services or advice of a lawyer because of a lack of money, and that justice then would be as available and accessible to the poor as to the rich. Anyone, therefore, can obtain the exact same legal representation or advice which any citizen, with the financial means to do so, would normally be able to obtain.

Legal Aid is not free. What you pay is based on your income and situation. You cannot choose your own lawyer; Legal Aid will choose one for you. An application form for Legal Aid is available at all court houses in the province and at the Legal Aid office:

502 Macleod Building
10136 - 100 Street
Edmonton, Alberta

Legal aid covers many kinds of problems including:

- criminal offences that can lead to a prison term
- separation and divorce
- wills and estates
- offences committed by juveniles

Lawyer Referral Service

If you can afford a lawyer, but do not know one, call Lawyer Referral Service. Call collect to Calgary, 263-5988. They will give you the names of three lawyers who deal with your type of problem. Choose one and make an appointment. State that this is a "lawyer referral" matter, and your first half hour interview will cost \$10.00. If you need more help, the cost must be worked out with the lawyer.

Lawyer Referral will also help you find lawyers who speak languages other than English.

Student Legal Services

Student Legal Services is a group of volunteer law students. These students give out general legal information and will help you if you cannot afford a lawyer. They will handle problems such as:

- Liquor Control Act offences
- Highway Traffic Act offences
- common assault
- possession of drugs
- matters in Small Claims Court
- landlord and tenant problems

For further information contact:

Law Centre
Room 108
University of Alberta
Edmonton, Alberta

Court Proceedings

The court and the method of trial will depend on the nature of the crime and sometimes the wishes of the accused. The Criminal Code distinguishes between two classes of crime - those punishable upon summary conviction and those which are regarded as indictable offences.

An important distinction between summary and indictable offences is that accused persons need not personally appear in a summary case. They may appear through legal counsel to set a date for trial, to enter a plea and for a trial. However, the provincial court judge may require the accused to appear in person. In the case of indictable offences, the accused must appear in person; if they do not appear, a warrant will be issued for their arrest.

1. Summary Conviction Offences

The Criminal Code sets out the procedure for cases of summary offences under the Code or other federal legislation, such as the Food and Drug Act and the Narcotic Control act. Each province has legislation setting out similar procedures to be followed for prosecution of summary offences relating to motor vehicles, liquor, hunting and fishing - for which prosecutions are fairly common. The commonest summary offences which arise under the Criminal Code are those of common assault, causing a disturbance, soliciting, unlawful assembly, impaired driving, refusing to comply with a breathalyzer demand, wilfully committing an indecent act, nudity in a public place, leaving the scene of an accident, dangerous driving, driving while prohibited, joy riding, wilful damage under \$50.00 and skipping bail.

In summary cases, there is no right to have a preliminary hearing or any other kind of pretrial discovery. The usual method of obtaining information before trial is for defence counsel to interview the Crown witnesses, or obtain particulars from the prosecutor, or both. There is also provision in the Criminal Code for making formal application for particulars, although it is seldom necessary to resort to this to obtain information.

2. Indictable Offences

Indictable offences are the more serious offences as described in the Criminal Code and they are classified further to determine which trial procedure will be used.

- (i) There is a group of indictable offences which are triable only by judge and jury, and for which there is an automatic preliminary hearing. These are set out in section 427 of the Criminal Code, and include first and second degree murder, treason, sedition, piracy, inciting mutiny among the armed forces, wilfully doing an act with intent to harm the Queen, and intimidating Parliament. All these offences, plus attempts and conspiracies to commit them, are triable only by judge and jury. The accused has no election, and the provincial court judge has jurisdiction only to hold a preliminary hearing to commit the accused for trial, or to discharge the accused because the evidence is insufficient to demand that the accused answer the charge.

(ii) Offences Triable Only by a Provincial Court Judge

The group of indictable offences listed in section 483 of the Criminal Code are triable only before a provincial court judge. They include theft under \$200, obtaining money by false pretences under \$200, possession of stolen property under \$200, attempted theft, being the keeper or landlord of a common gaming or betting house or being found in the same, bookmaking, operating lotteries, cheating at games, being the keeper, inmate, found-in, or lessor of a bawdy house, driving while disqualified or fraud in relation to the collection of a transportation fare. All these cases must be tried before a provincial court judge; the accused has no right to a preliminary hearing and no right to elect the form of trial.

(iii) Electable Offences

The broadest group of indictable offences is the third category, which includes all indictable offences not specifically provided for in sections 427 and 483. Most common of these are breaking and entering, robbery, forgery, theft over \$200, obtaining money by false pretences over \$200, possession of stolen property over \$200, possession of a weapon for a purpose dangerous to the public peace, most driving offences when the prosecutor opts to proceed by indictment, sexual assault, gross indecency, attempted murder, charges in relation to prohibited and restricted weapons where the prosecutor opts to proceed by indictment, charges of trafficking in narcotics and other drug charges.

In all these offences there are three modes of trial which may be held. The accused may elect to be tried by a provincial court judge, or by a judge of the Court of Queen's Bench, or by a judge and jury. If the accused elects to be tried by a Court of Queen's Bench judge, or by a judge and jury, the provincial court judge must hold a preliminary hearing. The accused can, and if the prosecutor agrees, waive this right to a preliminary hearing, and go directly to trial.

In many cases, the accused's rights to an election, and therefore a preliminary hearing, is controlled by the prosecutor's option to elect to proceed by summary or indictable offence. If the prosecutor opts to proceed by indictment, the accused gets to choose. If the prosecutor opts to proceed summarily, the accused has no election and no right to a preliminary hearing, although the maximum penalties in the event of conviction are much lower.

The Trial

If the accused pleads guilty to the charge, there is of course, no need for a trial. However, sometimes people will plead guilty to a charge out of fear or ignorance when, in fact, they are not actually guilty of that specific charge. Courts are careful to see that the facts justify the charge and also that the accused is aware of the implications and consequences of a guilty plea. If a court is not satisfied that a guilty plea is warranted, the guilty plea will not be accepted and a trial date will be set to establish the guilt or innocence of the accused.

It is not possible to describe the events which occur in a criminal trial as they differ with every offence. However, it is possible to outline the sequence of events as follows:

1. The attorney for the Crown summarizes the facts of the case, emphasizing how the Crown will establish guilt.
2. Opening arguments by the defence attorney, emphasizing what the Crown must prove, and how it will fail, and the defence will try to establish either the innocence of the accused or that there is insufficient evidence for conviction.
3. The Crown attorney presents witnesses. Their answers to questions are expected to prove the commission of the alleged crime. Before leaving the witness stand, they must submit to cross-examination by the defence. Cross-examination is designed to weaken the prosecution's case by casting doubt on the accuracy of the witnesses' statements and by eliciting from them further information which may be of benefit to the accused.
4. The defence calls its own witnesses. The defence witnesses are subject to cross-examination by the prosecution.
5. Closing argument by the Crown attorney, who will stress how the evidence leads to an inescapable verdict of guilty.
6. Closing arguments by the defence attorney who will stress the lack of evidence against the accused and the evidence supporting a verdict of not guilty.
7. The judge summarizes the evidence and charges (instructs) the jury, if there is one, as to the various verdicts it may bring in.
8. The verdict is given by the jury, if there is one; otherwise by the judge.
9. If the accused is found guilty, the judge imposes sentence.

The Jury

Section 11(f) of the Canadian Charter of Rights and Freedoms states:

...Any person charged with an offence has the right...to benefit of trial by jury where the maximum punishment for the offence is imprisonment for 5 years or a more severe punishment.

The Criminal Code of Canada allows the accused to elect a trial by judge and jury for most indictable offences. However, there is no right to a jury trial for summary conviction offences nor for certain indictable offences such as theft under \$200.00. Furthermore, there is no right to trial by jury for a quasi-criminal charge under a provincial statute such as the Highway Traffic Act nor for infractions of municipal by-laws.

In Alberta, it is relatively rare to have jury trials in civil cases. However, section 16(1) of the Jury Act does permit jury trials in actions for defamation, false imprisonment, malicious prosecution, seduction or breach of promise for marriage. Actions founded on any tort or contract in which the amount claimed exceeds \$10,000, or actions for the recovery of property the value of which exceeds \$10,000, can also be heard by a jury. However, it is important to note that the Jury Act permits a judge to refuse to hold a jury trial if he or she feels the trial will involve a prolonged examination of documents or accounts, or a scientific or long investigation.

Basically any Canadian citizen eighteen years of age or older who is an Alberta resident is eligible for jury service unless exempted. Members of Parliament, the Legislature, municipal or county councils are exempt as are judges, lawyers, policemen, probation officers and certain government employees. Also exempt are those who have been convicted of a criminal offence where a jail sentence exceeding 12 months could have been imposed.

Persons who are 65 years of age or older, although eligible, may claim exemption from jury duty. So can persons who have already served on a jury within the preceding two years; who live too far away; who are in poor health; or, who can show that serving on a jury would cause severe hardship.

Jury Selection

Once the clerk of the court realizes that a jury is required, word will be passed onto the sheriff to summon a sufficient number of people. The sheriff, using a list of electors, or assessment roles, or other public documents, selects at random the required number of names. Ineligible jurors such as judges or policemen are deleted by the Sheriff. The Sheriff prepares a list of the names, addresses and occupations of those people selected and gives the list to the clerk. In addition, the sheriff or his bailiffs will deliver a summons to each person on the list, notifying them of the date they must appear in court for the jury selection.

The courtroom where the jury selection takes place contains a drum or box at the front. In this box are cards listing the name, address and occupation of each person on the jury list. The clerk extracts these cards from the box and calls forward the candidates.

The judge will probably make a few general inquiries to see if anyone should be excused from jury duty. Then the crown prosecutor and defence counsel are given an opportunity to challenge the candidate.

A candidate for jury duty can be eliminated in three ways. First, lawyers can *challenge for cause*. The usual reason given for a challenge for cause is that the juror is biased, or is not *indifferent*. Perhaps the prospective juror is personally concerned with the facts of the case or is closely connected with a party involved in the proceeding.

The second method of dismissing a prospective juror is by resorting to the *peremptory challenge*. With peremptory challenges, no explanation need be given as to why the person is unsatisfactory. The accused is allowed twenty peremptory challenges if charged with high treason or first degree murder; twelve peremptory challenges if charged with an offence punishable by five years of imprisonment or more; four peremptory challenges for all other offences. The Crown has four peremptory challenges no matter what the offence.

The Crown has another method of elimination at its disposal. If not entirely content with the candidate, the prosecutor will direct the person to stand by. The Crown is allowed forty-eight standbys and these are used up by the Crown before making its peremptory challenges.

If both defence counsel and crown prosecutor are *content* with the prospective juror, he or she is sworn in by the clerk and takes a seat in the jury box. If, in a criminal trial, twelve jurors have not been chosen after going through the entire list of names, then those who have been *stood aside* by the Crown are now called forward in the order they were stood aside. This second time the Crown must challenge for cause, or use up its four peremptory challenges or accept the juror.

All criminal juries in Canada contain twelve jurors. Only six jurors are required for civil trials. The verdict in a criminal trial must be unanimous. If all twelve jurors cannot agree, then it is declared a *hung jury* and a new trial is held. In a civil trial it is sufficient if five out of the six jurors agree on the verdict.

Appeals

Any person who is convicted of an indictable offence may appeal the conviction or sentence to the Alberta Court of Appeal. Similarly, the prosecution may appeal an acquittal or a sentence which it considers not to be severe enough. The appeal must be based on valid reasons, and not be made just to postpone punishment. Appeals may be initiated for one or more of the following reasons:

1. The judge erred by admitting evidence that should not have been admitted.
2. The judge wrongly instructed the jury.
3. The jury was not impartial.
4. The facts were not brought out.
5. New evidence is now available.
6. The law contravenes basic rights, or conflicts with other laws.

Any person who is convicted of a summary conviction offence may appeal the verdict. The Crown is also entitled to appeal in such cases. The appeal can be conducted by either *trial de novo* or by way of stated case.

An appeal by *trial de novo* is a new trial before a judge of the Court of Queen's Bench. Neither side is restricted to the same evidence or witnesses used at the first trial.

An appeal by way of stated case is used where the basis of the appeal is a question of law. The Provincial Court judge is required to write down the facts of the case and its legal question and submit this to a judge of the Court of Queen's Bench who will decide on the validity of the Provincial Court judge's decision.

The decision given by trial de novo or stated case may be further appealed on a question of law to the Alberta Court of Appeal.

Appeals from the Alberta Court of Appeal to the Supreme Court of Canada are somewhat restricted. Any person who has been sentenced to life imprisonment may appeal. In other cases, a person convicted of an indictable offence may appeal on a question of law only where the decision of the Appeal Court was not unanimous, that is, one or more justices did not agree with the majority decision. In all other instances, permission must be granted to the Supreme Court of Canada.

Sentencing

With very few exceptions, such as murder and the importing of narcotics, the law sets no exact or minimum penalty. Most criminal legislation sets only a maximum penalty. It is therefore left to the presiding judge what sentence would be appropriate in any given case. The judge will probably delay sentencing to allow both the defence and the prosecution to present arguments concerning the character and previous record of the convicted person. The judge will often ask that a pre-sentence report be prepared concerning the person's family life, education, employment record, involvement in community activities, etc. The judge is likely to consider many factors before passing sentence. These factors include:

Is it your first offence?

What kind of a sentence will deter you from repeating the offence?

What kind of sentence passed on you will deter others from committing a similar wrong?

What kind of attitude do you reflect in Court?

What is the gravity of the offence?

What has been your past conduct?

Does your family history hint at good future conduct?

How old are you? Working? Regularly attending school?

What amends have you made to right the wrong you have done?

What was your reason for committing the offence?

Once the judge has taken all of the above information into consideration, the judge will choose the sentence which is felt to be appropriate in the particular case. In a few instances however, the judge has little choice as to the sentence to be imposed as it may be flatly stated in the Criminal Code what the punishment must be.

(a) Capital Punishment

In Canada, until 1961, anyone convicted of murder was sentenced to hang, whether the murder was *premeditated* (planned beforehand) or committed in a moment of rage or passion. All convicted murderers received the death sentence. Many of these sentenced to die, however, had their sentences commuted (changed) to life imprisonment. In 1961 the federal government

amended the law on capital punishment to distinguish a capital from a non-capital murder. Capital murder included: premeditated murder, murder committed during a violent crime (rape, robbery, arson) and the murder of a police officer or prison guard on duty. A person convicted of capital murder would receive the death penalty, which could only be commuted by the federal cabinet. Non-capital murder included all other types of murder punishable by life imprisonment.

In December, 1967, Parliament suspended capital punishment for five years, except for convicted murderers of police and prison guards. This trial period was extended for another five years in 1972. Section 46 of the Criminal Code still listed treason as a capital offence and piracy (hijacking) accompanied by murder or attempted murder also carried the death penalty in certain instances, but the focus of public debate centered on execution of convicted murderers, particularly those who had killed a police officer or prison guard.

In recent years, public debate on the subject of capital punishment has intensified as the rate of violent crimes committed has increased. Both are topics of major concern to most Canadians. People who favor the death penalty are called *retentionists* and those who oppose the death penalty are called *abolitionists*. Some people blame the rising crime rate on the fact that no one has been executed in this country since 1962. This was a result of the federal cabinet exercising its legal right to commute all death sentences to life imprisonment.

After 1962, retentionists argued that the cabinet was ignoring the law and that the death penalty should be implemented not only for convicted slayers of police and prison guards, but for other types of premeditated murders as well. The abolitionists argued that since the cabinet was not obeying the laws on capital punishment, it should change the law and formally abolish capital punishment altogether. Even though the death penalty has been abolished permanently, the topic of capital punishment will still be an issue in this country. Opinion polls show that the majority of Canadians favor the death penalty in certain instances. If the crime rate continues to rise now that the death penalty is abolished, politicians might be forced to reconsider the whole issue.

As a result of the 1976 vote in the House of Commons, the death penalty has been replaced by longer jail sentences and stricter parole regulations. A premeditated murder is classified as *first-degree* murder. A person convicted of first-degree murder receives a minimum sentence of 25 years in prison. A prisoner will only be able to apply for the sentence to be reviewed by a judicial committee after 15 years of the sentence has been served. This committee includes two representatives from the community to ensure that its views are represented in any decision to reduce a jail sentence for a convicted murderer. This also applies to those convicted of killing a prison guard or police officer and to anyone who kills during rape, hijacking or kidnapping.

Murders committed in moments of rage or passion are listed as *second-degree* murder. The minimum sentence for this ranges from 10 to 25 years, depending on the circumstances of a particular case.

(b) **Imprisonment**

For the more serious offences a convicted criminal may be imprisoned for a period of time as the court thinks necessary to either rehabilitate the offender, protect the public and/or deter others from committing similar offences. If an accused is convicted of more than one offence and receives a sentence of imprisonment for each offence, the terms may be served at the same time (concurrently), or one after the other (consecutively) as the court orders.

A prisoner may be released prior to the expiration of the sentence. This is called parole. An inmate of a penitentiary must serve at least nine months, but may be released on parole after serving one-third of the sentence or four years, whichever is less. During parole the prisoner must not associate with known criminals and report to a parole officer at a designated time. If the prisoner breaks any of the conditions of the parole or commits another offence while on parole, the parolee will usually be required to serve the remaining balance of the sentence. Prisoners in both federal and provincial prisons can receive time off for good behavior. This amounts to one-quarter of the sentence being rescinded. In addition, prisoners can also earn an additional three days off per month by applying themselves to any program they are assigned to in prison and working hard. The Criminal Code now has provisions for intermittent jail sentences where the total amount of imprisonment does not exceed 90 days. This means that if individuals were going to school they could go on week days and serve their jail term on the weekend. This is an improvement over the old system whereby persons sent to jail were forced to isolate and cut themselves off completely from the activities in the community. Now they can continue supporting their family, pursuing their career or their education, while serving the jail term.

(b) **Suspended Sentence and Probation**

When no minimum penalty is provided, a court can suspend the passing of a sentence and release the convicted person under certain conditions which are set down in a probation order. The maximum period is three years. The probation order will require the person to be of good behavior and to appear in court when requested to do so. The order may also contain provisions to the effect that the person is to report periodically to a probation officer, to diligently look for a job, not drink liquor, etc. Any breach of the conditions set down in the probation order can result in being recalled to court to be sentenced. The convicted person would have to serve the full sentence regardless of the time already served of the probation period.

(d) **Discharge**

Wherever the offence is one which is punishable by a maximum penalty of less than 14 years, which includes such crimes as theft under \$200, false pretences, possession of stolen property, all drug possession charges, weapons charges, escaping lawful custody, causing a disturbance, impaired driving, hit and run, assaulting a police officer, etc., the court may discharge the accused absolutely or conditionally instead of convicting. This can be done if it is in the best interests of the accused and not contrary to the public interest. The effect of an absolute discharge is that the accused, although found guilty of the

offence, receives no conviction and no penalty. The court can also impose a conditional discharge wherein there will be a probation order and the accused will be directed to comply with the conditions of the probation order.

(e) **Fines**

Minor offences will usually result in the convicted person paying a money penalty. A short term of imprisonment is usually added if payment is not made. The range of fines is often stated in the appropriate section of the Criminal Code or other statute dealing with the offence. In the absence of any such limits a fine may be imposed in any summary conviction case as the only penalty or as a penalty in addition to some other form of punishment. In an indictable offence where the maximum penalty is five years or less, a fine can be imposed instead of or in addition to any other punishment. Where the maximum penalty is more than five years imprisonment, a fine can be levied only in addition to any other penalty. There is no maximum limit fixed on the amount a court can fine someone on conviction of an indictable offence.

(f) **Driving Prohibitions and Restrictions**

When a person is convicted of any offence in the Criminal Code that deals with the operation of a motor vehicle, the court can make an order prohibiting that person from driving a motor vehicle anywhere in Canada. This may be in addition to any other penalty imposed. This period is unlimited when it involves serious offences such as criminal negligence causing death, and is limited to three years in other cases. A court may, at its discretion, restrict the convicted person to operating a motor vehicle only at certain hours or days. Individuals may only be allowed to drive to and from their place of business or only during the hours of sunlight. This allows persons to continue to work and reduces the hardships suffered by their families. In addition to the above, the court can also cancel or suspend a driving license for violations of provincial highway traffic regulations.

The Criminal Records Act

This law was passed in order to make it easier for the criminal to fit back into the community after serving time in prison. A person with a criminal record often finds it difficult to obtain a responsible job because employers and bonding companies are unwilling to take the risk of hiring an ex-convict. A bonding company is an insurance company that insures businesses against possible offences by their employees during the course of their employment, e.g. theft or fraud. When a company hires an employee, it is required to submit the employee's name to the bonding company, which investigates the employee's background to determine if that person is "bondable" (a good security risk). If, during the course of the investigation, the employee is found to have a criminal record, the bonding company usually refuses to insure the employee and the employer therefore has to dismiss the person.

The Criminal Records Act is an attempt to correct this situation and is an important first step towards helping convicts find responsible jobs in the community. A person can now apply for a pardon (make application to have a criminal record forgiven) two years following probation for a summary (minor) offence, or five years in the case of an indictable offence. It is felt that this time period is necessary to see whether the person seriously intends to reform. The R.C.M.P. investigates the background of an applicant and forwards the findings to the National Parole Board, which recommends whether a pardon should be granted. It is unlikely that the pardon will be granted if another criminal offence has been committed in the meantime. If a pardon is approved, the person's criminal record is removed from the files. It is not destroyed, but the person is forgiven, or pardoned, for having committed the offence.

Crimes Compensation Board

Help is available to the innocent victims of crimes of violence in Alberta. The Crimes Compensation Board, established by the Province of Alberta, can pay for most expenses that result directly from violent crimes. In hearings held throughout the province, the Board reviews each applicant's claim and decides on the amount and type of compensation it can award.

To be eligible, a person must suffer some direct personal injury as the result of a crime of violence. These crimes include assault, wounding with intent, murder and attempted murder, robbery, dangerous use of firearms, criminal negligence, manslaughter, arson, indecent assault, and others.

Injuries may be suffered by an innocent victim while aiding a police officer or preserving the peace. In addition, the dependents of anyone killed in the above circumstances may also apply to the Board for an award to cover funeral expenses and loss of support.

The Board must receive the claim within one year of the injury or death, and all details must have been reported to the police within a reasonable time following the incident.

Claims must be for amounts over \$100, and normally only residents of Alberta may apply for compensation.

If required by the Board, the applicant must consent to a medical examination, and allow the Board to conduct inquiries to verify statements made to it.

Normally, the Board cannot compensate for injuries caused by motor vehicles, except in certain circumstances, such as the spouse of someone killed as a result of criminal negligence on the part of the operator or driving while impaired.

Because the Board may require documents to substantiate any claims made to it, applicants are advised to obtain and keep receipts of all costs directly related to the injury and be able to provide some form of supporting evidence for claims that wages or salary were lost because of the injury. The Board itself will obtain a medical statement or report from the doctor involved, particularly if the victim's injuries have resulted in a permanent handicap or disability.

Only expenses that directly relate to personal injuries can be compensated by the Board. These include:

- (a) wages or salary lost because of the injury, including potential loss of earnings in the future,
- (b) medical and dental expenses,
- (c) damaged personal clothing or eyeglasses,
- (d) funeral expenses,
- (e) legal and counsel fees,
- (f) maintenance of children born as a result of rape, and
- (g) transportation expenses and loss of earnings resulting from attendance at a Board hearing.

Compensation for disfigurement and pain and suffering can be awarded only if the injuries occurred while the victim was aiding a police officer or preserving the peace.

The Board cannot compensate for property damages. The only exception is damaged clothing worn at the time of the injury, or eyeglasses.

Applications are reviewed by the Board, but no decisions are made until a hearing between the Board and the victim, or the victim's representative, is held. Those who qualify will be notified of the date and location. Normally a hearing will be held in public, but the Board may, because of the nature of the crime, direct a closed hearing.

Applicants are expected to attend the hearing and provide any further information requested by the Board.

Following a hearing, the Board reviews the application and all the evidence it has obtained. It then decides if it can award compensation and what compensation it should award under the provisions of the Criminal Injuries Act.

All applicants will be notified of the Board's decision within a reasonable time. In cases where compensation is awarded, full details of the award will be provided.

In its awards the Board uses a variety of compensation methods, depending on the needs of the victim. If self-sufficiency is lost, the Board may decide on a monthly allowance which may be reviewed if circumstances change.

In cases where an applicant is in actual financial need, the Board can consider an interim payment prior to completion of the application. This help is available when the victim requires continuing or long term medical attention, or has temporarily lost earnings or earning power.

Laws of Specific Interest to Young People

The law, in an effort to protect children, has defined and limited the extent to which young people may participate in society. Many laws have been created to regulate both children's behavior and the behavior of adults in relation to children. The age at which adult obligations end or a young person's responsibilities begin varies depending upon the subject matter. Following are some of the various ages upon which the law defines part of a child's legal relationship to the world.

The Young Offenders Act

The Act deals with youths from 12-18 who have committed offences under Federal statutes (for example the Criminal Code and the Narcotics Control Act). The provincial Young Offenders Act, S.A. 1984 c. Y-1, deals with youths aged 12-18 years who are charged with breaches of provincial statutes.

The Criminal Code

A child under the age of twelve years cannot be convicted of a criminal offence. Parents and guardians have a legal duty to provide the necessities of life to all children under sixteen years.

The Age of Majority Act

The age of majority is eighteen years. At this age a person becomes responsible in civil matters. Many of the legal obligations and privileges of adulthood can be taken on. For example a person may vote, dispose of property or marry without parental consent.

The Employment Standards Act

This Act sets out the kinds of work that may be done by adolescents and young persons. It provides for two categories: adolescents are from twelve to fifteen years and, young persons from fifteen years to eighteen years.

Adolescents can only work for two hours on a school day and for eight hours on other days. They cannot be employed from 9:00 p.m. to the following 6:00 a.m. Adolescents require the written consent of their parents or guardian in order to be employed. The restricted working hours on school days and the requirement for consent do not apply to adolescents who are employed in vocational training or work experience programs as part of their schooling. Adolescents can only work at certain jobs such as a delivery person for a retail store, a clerk in an office or store, or delivery person for newspapers and flyers.

Young persons cannot work from 9:00 p.m. to 12:01 a.m. nor can they be employed on retail premises selling food, beverages, gasoline or other related petroleum products or hotels or motels unless they are working with and in the continuous presence of an individual over 18 years of age. From 12:01 a.m. to 6:00 a.m. a young person cannot be employed on the above kinds of premises at all, but he can be employed in other areas with his parents' or guardian's consent if he works with, and in the continuous presence of, an individual over 18 years.

Children under the age of 12 cannot be employed (children working on paper routes are legally considered self-employed).

The Liquor Control Act

Only those over the age of eighteen years may purchase liquor, enter a liquor store, or enter licensed premises (a tavern or lounge). A person under the age of eighteen years may lawfully be supplied liquor by a parent or guardian in his or her own home or another residence.

The Marriage Act

No one under the age of sixteen years can marry, except for girls who are pregnant or have a child and the consent of their parents. Everyone under the age of eighteen years requires the consent of (depending upon the situation) of either both parents, one parent or a guardian, in order to marry.

The Motor Vehicle Administration Act

Anyone fourteen years and over may apply for a motor vehicle learner's license, or a license to operate a motorcycle, moped or scooter. Anyone sixteen years and over may apply for an operator's license for a motor vehicle. If a person is under the age of eighteen years, he or she must have their application form signed by a parent or guardian, unless he or she can prove that they are either self-supporting or married.

The School Act

Every child between the ages of six and sixteen years must attend school.

The Child Welfare Act

A child under the age of eighteen years can be apprehended without a warrant if he or she is believed to be a neglected child.

Exercise 1

Define the following terms. If you are unsure as to the meaning of any particular word, consult your lesson notes or a dictionary.

1. alibi - _____

2. appellate - _____

3. bail - _____

4. concurrently - _____

5. custody - _____

6. empanel - _____

7. harassment - _____

8. jeopardy - _____

9. preside - _____

10. provocation - _____

11. pursuant - _____

12. recognizance - _____

13. surety - _____

14. verdict - _____

15. warrant - _____

Exercise 2

By circling the letter **T** or **F** in the space provided at the left, indicate whether each of the following statements is true or false.

- | | | |
|---|---|--|
| T | F | 1. Both the federal and provincial governments have passed Young Offenders Acts. |
| T | F | 2. Every young person who breaks a law need not appear in court. |
| T | F | 3. Disposition refers to the sentencing or other treatment of an offender. |
| T | F | 4. Under the Young Offenders Act court hearings are closed to the public. |
| T | F | 5. Detention of young offenders must be separate and apart from adult offenders. |
| T | F | 6. All records, including photographs and fingerprints, will be retained by the police whether the young offender is convicted or not. |
| T | F | 7. The courts have declared that, under no circumstances, will automatism be accepted as a valid defence. |
| T | F | 8. Consent is recognized as a valid defence to a murder charge. |

- T F 9. The Criminal Code entitles individuals to use reasonable force to defend their property.
- T F 10. The Charter of Rights and Freedoms gives an arrested person the right to retain and instruct legal counsel without delay.
- T F 11. In Alberta, anyone may represent an accused in court proceedings.
- T F 12. Persons who are 65 years of age or older are exempt from jury duty.
- T F 13. In Canada, persons convicted of first-degree murder are sentenced to death by hanging.
- T F 14. Upon the granting of a pardon, the person's criminal record is destroyed.
- T F 15. The Crimes Compensation Board cannot compensate for property damage.

Exercise 3

Fill in the blank spaces in the following statements; only one word is required for each space.

1. If the defence can show a reasonable doubt as to guilt, the accused is entitled to be _____.
2. It is a legal safeguard against persecution and harassment by the authorities that a person cannot be placed in _____ twice for the same offence.
3. The burden of proving insanity is on the _____.
4. Consent cannot be used as a defence to a charge of _____.
5. _____ is a very limited defence since it applies only to reduce murder to manslaughter.
6. The specific charge against the accused must be shown on the _____ and the accused has a right to read it.
7. A person has the right to use force to resist an illegal _____.
8. Any person who is convicted of a summary conviction offence may _____ the verdict.

9. _____ is when prisoners are released prior to the expiration of their sentence.
10. Under the federal Young Offenders Act a "young person" is defined as one who is _____ years of age or more, but under _____ years of age.
11. Under the Young Offenders Act, a young offender may be committed to either _____ custody or _____ custody.
12. A person has the right to remain _____ when stopped and questioned by a police officer.
13. If an accused is charged with a summary offence the police have no right to take _____ and _____ and the accused is entitled to resist such an attempt.
14. All criminal juries in Canada contain _____ jurors, while civil juries are composed of _____ jurors.
15. A child under the age of _____ cannot be convicted of a criminal offence.
16. The age of majority is _____ years.

Exercise 4

1. What happens to a person who is declared not guilty of a crime due to insanity?

2. What two situations will constitute the successful defence of intoxication?

(a) _____

(b) _____

3. Under what conditions is the consent to sexual assault nullified?

(a) _____

(b) _____

(c) _____

4. Whom may a police officer arrest without a warrant?

(a) _____

(b) _____

(c) _____

5. When does the police officer not have to inform suspects of the reason for their arrest?

(a) _____

(b) _____

(c) _____

6. For what possible reasons can the defence attorney and the Crown attorney challenge for cause a prospective juror?

(a) _____

(b) _____

(c) _____

7. For what possible reasons can a person appeal a conviction?

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

8. What factors is the judge likely to consider before passing sentence on a convicted criminal?

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

9. In considering an application to transfer a young offender to adult court, what factors must the Youth Court judge consider?

- (a) _____
- (b) _____
- (c) _____
- (d) _____

Exercise 5

1. A man saw a prowler outside his window. He shot and killed the prowler with his hunting rifle. He was charged with murder. In court his defence was that he acted in self-defence. Will this defence be successful. Explain.

2. The accused had a criminal record commencing in 1971 and continuing until 1980 when he was sentenced to four years for break and entry. He was paroled in November of 1983. While on parole he was arrested and charged with two robberies. He applied for bail but was refused. On what probable grounds was this bail application turned down?

3. Two men were arrested following a robbery. Both were lined up beside their car and frisked. Their car was also searched. The police had no search warrant. Were these two searches legal? Explain.



LESSON RECORD FORM

3430 Law 30

Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

(If label is missing
or incorrect)

File Number

Time Spent on Lesson

Lesson Number _____

Student's Questions and Comments

Apply Lesson Label Here

Name _____

Address _____

Postal Code _____

*Please verify that preprinted label is for
correct course and lesson.*

FOR SCHOOL USE ONLY

Assigned
Teacher: _____

Lesson Grading: _____

Additional Grading
E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

Lesson Recorded _____

Teacher's Comments:

Correspondence Teacher

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

- (1) All pages are numbered and in order, and no paper clips or staples are used.
- (2) All exercises are completed. If not, explain why.
- (3) Your work has been re-read to ensure accuracy in spelling and lesson details.
- (4) The Lesson Record Form is filled out and the correct lesson label is attached.
- (5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do not enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.

Try to mail each lesson as soon as it has been completed.

When you register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

TORT LAW

NATURE OF A TORT

No really satisfactory definition of a "tort" has yet been formulated. The word comes from the Latin word "tortus", meaning twisted and crooked, and it very early found its way into the English language as a general synonym for wrong. Generally a tort is a civil wrong, other than a breach of contract, which the law will redress or give satisfaction for in an action for damages.

Although both criminal law and the law of torts originally arose from a common desire for revenge and deterrence, they now have separate and distinct functions. When you commit a crime, theoretically you have committed an offence against the State for which you will be punished. Criminal law is concerned with penalizing the accused person in order to protect society as a whole. Tort liability, on the other hand, exists primarily to compensate the persons injured by compelling the wrongdoers to pay for the damages they have done. Its function is to shift the loss from the victims to the persons who inflicted it.

The recognition of a law of torts as a separate and distinct branch of the law is a fairly recent occurrence. The first English textbook on the subject did not appear until 1860. Since that time, however, the subject of "Torts" has probably received more attention from both legal writers and the courts than any other topic in the law. This is understandable if one grasps the extremely wide scope of the field involved, and at the same time bears in mind the impact of modern technology on the various activities in which people are engaged in present day society.

The purpose of the law of torts is to adjust personal losses and to afford compensation for injuries sustained by one person as a result of the conduct of another. Such a statement of the problem indicates that the law of torts must constantly be in a state of flux, since it must be ever-ready to recognize losses arising in new ways. For instance, before the invention of the automobile, there were certain established principles of law regarding the use of highways. The automobile rapidly rendered many of those principles obsolete. Not only did automobiles take up most of the existing highways, forcing animals and humans off, but they did something animal-drawn vehicles seldom did - they ran into each other. The automobile has had such an effect on our lives that every legal jurisdiction has enacted some form of automobile laws that cover the liability of those who operate them.

Changes to tort law will continue to be influenced by increases in population. The chances that we will intrude upon other individuals, injure or anger them, increase just because of our numbers. We find it harder and harder to avoid hitting each other with our machines on the highways. We are more and more aware just how close our neighbors live to us. Their noise, refuse, and behavior annoy us more, simply because of the proximity. We are constantly inventing new things, things that fly, move, project and things that cause serious harm or death when they malfunction. When we suffer injury, we expect someone to be responsible for what happened, and perhaps a civil suit to pay for losses suffered.

The study of the law of torts is, therefore, a study of the extent to which the law will shift the losses sustained in modern society from the persons affected to the shoulders of those who caused the loss or, more realistically in many cases, to the insurance companies who are increasingly covering the many risks involved in the conduct of business and individual activities.

The law of torts has, in the main, been developed by the courts proceeding from the simple problems of a primitive society to those of our present complex civilization. Analogies, logic, judicial experience and policy slowly reflecting current social, moral, or economic thinking have all played their part in this development, but the essential problem has remained the same - which of the many claims for losses that can be asserted deserve to be recognized, and to what extent will the law curb freedom of action on the part of those causing such losses either by making them refrain from the conduct involving loss or else compelling them to pay compensation.

Who Can Commit Torts?

The criminal law excludes some persons from criminal responsibility because they lack a certain mentality. Examples are insane persons, children, and in some cases persons under the influence of drugs or alcohol.

Contract law holds that some persons cannot enter contracts because they are incapable of doing so. Included are insane persons, intoxicated persons, or anyone incapable of understanding the nature of a contract.

In tort law, the exclusions are not so great. Tort law is more concerned with the conduct of individuals than with their motives. It is for this reason that children, while often immune from criminal prosecution, enjoy no immunity from tort actions being brought against them provided, of course, that they have attained the age of reason. Thus, in theory at least, there is nothing to prevent mischievous or clumsy youngsters from being sued in tort for any damage they cause. In practice, however, there is little point in suing a child (or any other person, for that matter) who is without financial resources, since any judgment obtained under such circumstances could not be enforced. There is no legal obligation on the parents of a youngster to make good the damage the child caused; although it is customary for them to pay for windows broken by their child's poorly aimed baseballs, etc., as a moral obligation. However, parents are equally responsible with their child if they instigate the commission of the tort; or authorized it previously; or if the child's tort is due to the parent's negligence - for example, where damage was caused because the parent let the child have matches, fireworks, or guns without proper instructions or supervision. It has been held to be "constructive negligence" by parents when the child caused damage in their presence - the parents should have kept their child under control. "Presence" in one case consisted of the parents being on the same floor as the child in a large department store - even though at the extreme other end of it.

Most courts hold that persons of unsound mind are liable for their torts unless they are incapable of forming intention or malice which is necessary for deliberate torts, or they are so insane as to be incapable of any voluntary action.

In the law of torts there is to be found a surviving remnant of the old theory that a husband and wife are one entity. While one spouse can sue the other for breach of contract and can lay certain criminal charges against the other, one cannot sue the other in tort. This is the case even if one committed a tort against the other before they were married.

If a married person commits a tort against someone else, only that person can be made to pay for it; generally, the marriage partner cannot be held responsible, even if one spouse has money while the other has none. Spouses are not responsible for their partner's torts because of the marriage relationship.

A corporation may sue and be sued, particularly for injury done to its business. Principals are liable for torts committed by their agents in the course of their duties, and employers are liable for torts committed by their employees within the scope of their employment. The Crown is liable for torts committed by its employees, provided the employees would be found liable if they were sued directly.

INTENTIONAL INTERFERENCE WITH THE PERSON AND PROPERTY

The idea of liability for the intentional infliction of injury to person or property seems quite simple. To be sure, it is one of the more settled and understandable areas of tort law, and yet it is not as easy as some would make it out to be. To begin with, it is impossible for the law to do more than infer what individuals' intentions are from their conduct. The law may frequently attribute to persons intentions which a psychologist would at most consider very doubtful. In other words, no one can be perfectly certain of what passes in the mind of another person; and therefore, the law takes the stand that what individuals think must be deduced from what they say and do.

Assault and Battery

Assault is an intentional tort which causes the plaintiff to believe that the defendant is about to cause bodily harm. It is often confused with battery but there is a precise legal distinction. Battery is actual harmful or offensive physical contact to another person. An assault does not involve physical contact, although it often comes before it. Assaults can arise due to the following types of acts:

1. An act intended to cause physical harm

This type of assault often directly precedes a battery, unless the battery is thwarted. Consider the following situation. A raises his fist threateningly at B and declares an intention to "punch B out." If A proceeds to punch B, A will have committed an assault and battery. If, however, B manages to run away before the blow is struck, A will be liable for assault but not battery.

2. An act intended to cause imminent apprehension of harm

If A never intended to punch B, but did intend to frighten B by making it appear so, A would still have committed an assault.

As previously stated, battery is harmful or offensive contact with another person.

1. Harmful contact

Cases of direct contact causing physical harm are the easiest types of battery to identify. For example, if a person punches, kicks, shoots, stabs or slaps another, that person is liable for battery. Harmful physical contact can also occur indirectly, that is without actually touching the other person. Poisoning another's food, for example, would be a battery. In one celebrated case, pulling a chair out from under another was considered a battery, even though the defendant never actually touched the plaintiff.

2. Offensive contact

In order to decide if contact is offensive, courts will look at the facts and determine whether or not the dignity and self-respect of the plaintiff were threatened.

It is not necessary that the person be aware of the touching. If the plaintiff is asleep, for example, and the alleged offender does something to him or her, such as kissing, clipping off hair, marking in some manner to injure or embarrass the person, the battery is as serious as if the plaintiff were awake.

The courts will naturally not penalize insignificant physical contacts which are unavoidable when people expose themselves to the hustle-and-bustle of modern living, or the boisterous conduct which is found in some clubs or at certain sporting events. Nor is it wrong to touch people in a decent and non-hostile manner in order to gain their attention. Passive obstruction, like blocking a doorway is not an assault either, although it might constitute "false imprisonment."

From these observations it may be gathered that the tort of assault cannot be committed without some degree of intention. If the harm was inflicted unintentionally but through carelessness, any action that is brought should be based on the tort of "negligence." Successful plaintiffs in assault cases may be awarded damages without having to prove that they suffered any monetary loss. The courts follow the principle that persons who were deliberately wronged should have their injury made good in some way. Since there is not means of making the injury undone, the only thing that law can do is to let the victims have some money to help them feel better about it.

Assault can be verbal, such as telling a person over the phone "I am going to come down there and break your nose." It can be a gesture such as picking up a weapon and waving it. Any series of events that leads persons to conclude rightly that a threat is being made upon them is sufficient.

Each case of assault must be decided upon its own merits. It may be a combination of acts, verbal statements, or gestures that creates the key element which is apprehension or awareness in the mind of the intended victim that a threat exists. This apprehension must be real. There must be at least some reasonable expectation that the threat can be carried out.

One may also commit an assault by the use of mere words which cause shock or mental distress to another as can be seen in the following illustrative case.

Case:

The defendant, over the telephone, told a friend that Steve Reynolds had hanged himself. After a number of repetitions, Steve's mother finally heard the statement and, believing the report to be true, sustained a violent shock and mental anguish, which brought on physical illness and incapacitated her for some time. In a civil suit by her against the defendant, it was held that she was entitled to recover damages, the court drawing the conclusion that the defendant made the statement with the intention it should reach the plaintiff and that any reasonable man would know that it would, in all probability, cause her not only mental anguish but physical pain.

Mere embarrassment or mental discomfort will not be sufficient to warrant an action for intentional infliction of mental suffering. The defendant must have exhibited extreme and outrageous conduct, and the plaintiff must have suffered severe mental distress. A less rigid approach might attract problems. Some say that if any person who was upset by the conduct of another could take the case to court, the courts would be flooded with such litigations.

In certain situations, an act directed toward one person is actionable if it causes mental suffering in a witness to the act. The only witnesses who can recover damages for mental suffering are (a) immediate family members, or (b) strangers who suffer physical as well as mental injury. The following case illustrates third party recovery by a family member.

Case:

The plaintiff (a daughter) was present when the defendant beat up his wife. As a result, the daughter suffered severe emotional shock for which she was awarded damages. The court held that because the daughter was present and the defendant was aware of that fact, it was implied that the defendant intended to cause mental injury to her.

Medical Battery

A physician who treats a patient or performs an operation must first obtain the consent of the patient. Consent requires that the patient is a person legally competent to give consent, is told the extent of the treatment to be performed, is informed of the foreseeable hazards, and voluntarily gives consent. Often a form is signed, signifying consent, but if anything is done beyond what the patient was told and consented to, the form is of no significance. If a patient is unconscious, the physician may apply procedures necessary to protect life and safety, but no more. Any further treatment must be postponed until the patient can give consent. Consent of the closest relative usually suffices in many cases. Failure to obtain consent permits the patient to sue the doctor for assault and battery.

Case:

This celebrated case took place in Alberta in the 1930's. The plaintiff's claim was for professional fees for an operation involving the amputation of the defendant's hand which was badly injured in an automobile accident. The accident took place near the town of Cardston and the defendant was taken to the hospital there. The plaintiff, a physician and surgeon duly qualified to practice, was called to the hospital and the defendant, being a stranger and unacquainted with the plaintiff, asked him to fix up his hand but not to cut it off as he wanted to have it looked after in Lethbridge, his home city. Later on in the operating room the defendant repeated his request that he did not want his hand cut off. The doctor, being more concerned in relieving the suffering of the patient, replied that he would be governed by the conditions found when the anaesthetic had been administered. The defendant said nothing. As the hand was covered by an old piece of cloth and it was necessary to administer an anaesthetic before doing anything, the doctor was not in a position to advise what should be done. On examination he decided an operation was necessary and the hand was amputated. The doctor said the wounds indicated an operation as the condition of the hand was such that delay would mean blood poisoning with no possibility of saving it. In this he was supported by two other attending physicians. However, the court was not satisfied that the defendant could not have been taken to Lethbridge where he evidently wished to consult with a physician whom he knew and relied on. The doctor took it for granted when the defendant, a Chinese without much education in English and average intelligence, did not reply or make any objection to his statement that he would be governed by conditions as he found them, that he had full power to go ahead and perform an operation if found necessary. However, the court felt that the defendant did not understand what the doctor meant, and that he would most likely have refused to allow the operation if he did. Further, he did not consider it necessary to reply as he had given explicit instructions.

Under the circumstances the court felt that the plaintiff should have made full explanation and should have endeavoured to get the defendant to consent to an operation, if necessary. It might have been different if the defendant had submitted himself generally to the doctor and had pleaded with him not to perform an operation and the doctor found it necessary to do so afterwards. The defendant's instructions were precedent and went to the root of the employment. The plaintiff did not do the work he was hired to do, and so failed in his action.

The defendant countersued for damages in the sum of \$400, being \$150 for an artificial hand and the balance for loss of wages due to the operation and possible general damages. The trial judge stated, "In my opinion the operation was necessary and performed in a highly satisfactory manner. Indeed, there was no suggestion otherwise. The damage and loss and the cost of an artificial hand are the results of the accident and not the unauthorized operation. The defendant, however, is, in my opinion, entitled to damages because of the trespass to the person. Personally, I in a similar position might have been able to satisfy myself that the operation was necessary, and that I should be glad to pay the reasonable fee charged, but it was not my hand and the defendant will always no doubt feel that he might have saved the hand if he had consulted with a doctor he knew. While I might have been able to forego my rights, I

cannot ask the defendant to do so and he is entitled to rely on his rights. There also must have been some shock to him when he found out his hand had been taken off in the manner in which it was, over and above the ordinary shock from an operation. His damages should be substantial but only sufficient to make them substantial rather than nominal. I place the amount at \$50."

Force Which is Not Battery

In certain cases a person may have legal power to take hold of or strike another person. Parents may apply force to their children as a disciplinary measure. Such force, however, cannot be unreasonable. Therefore, beating a small child can result in criminal prosecution of the parent. There is no specific age at which the right of the parent to discipline the child ends. Hence there is no set age at which the child can refuse to be struck and forcibly resist. Each case depends upon the circumstances and the persons involved. School teachers are legally considered "local parents" to take the place of parents and may discipline students in their care within reason as circumstances demand to maintain order. This discipline could in many situations require the taking hold of a student.

False Imprisonment

As the name implies; this consists of depriving individuals of their freedom without good cause. It not only includes locking someone in prison or a confined space; it can also be committed by preventing people from going their accustomed way and having to make a substantial detour; or by detaining them in, or forcing them into, any place where they do not wish to be.

If individuals have voluntarily consented to be restrained, they cannot later sue. The emphasis is upon the impression created in the victim's mind, which is very similar to the feeling of apprehension felt when assault is committed. A partial restraint does not constitute imprisonment. For example, if there are two doors leading out of a room, and a person blocks one of them, the alleged victims cannot claim to have been imprisoned when it is obvious they could have gone out the other door. Unintentionally confining people does not constitute false imprisonment, but if the persons suffer harm they can still sue for negligence. For example, if a person carelessly locked another inside a deep freeze locker, not knowing the person was inside, the suit would allege negligence, not false imprisonment. If the person suffered some harm from being locked in, the person would succeed in an action for negligence. To deprive persons of their freedom for even a short period of time is usually considered to be imprisonment. If the driver of a car proceeds at such a speed as to prevent a passenger from getting out, or if a person is set adrift in a boat, or if submission is obtained by misusing authority such as the power of arrest, all would constitute false imprisonment.

Case:

The plaintiff was accosted in the store premises of the defendant company and was accused of stealing a cake of soap, by putting it in his pocket. He was tapped on the shoulder by a store detective, and was requested to go upstairs to one of the offices. He denied having the cake of soap, and emptied out his pockets and illustrated that he was not in fact guilty of the alleged theft. The question before the court was whether there had in fact been an arrest. The judge held that the plaintiff was "constrained in his freedom of action." This constraint coupled with the subsequent searching constituted false imprisonment and false arrest, for which the defendant was liable in damages.

The question is sometimes raised as to whether or not persons who are imprisoned by the state for a crime they did not commit can later sue for damages. Assume that convicted persons are later able to establish definitely that they were innocent of the crimes for which they were found guilty and spent time in prison. The United States recognizes in most instances the right of a person in this position to sue the state for false imprisonment. Canada does not. The situation is somewhat different because of the legal tradition involved. Canada still refers to the state as the "Crown," meaning the king or queen. In matters of criminal law, the Crown can do no wrong. Thus no one involved in a criminal case can be subject to a law suit later either because the accused was wrongfully found guilty or because the crown attorney brought them to trial and they were found not guilty. If law suits were permitted under these circumstances, the accused could sue the judge, the crown attorney, and all members of the jury. No one would be willing to serve on a jury under these circumstances. While we can sympathize with a person held in prison while innocent, we must also recognize that the jury system was designed to uphold the right of the accused to a fair trial, not a perfect trial. If we accept the possibility that a guilty person might go free, we must also accept the possibility that an innocent person might be found guilty. That is the risk of the system which we will accept. In some cases the government has made a payment to a person who was later retried and found not guilty. This is not a compulsory payment, but only a small compensation for the loss suffered.

Malicious Prosecution

Malicious prosecution is the laying of criminal charges, knowing them to be unfounded. This tort can also be committed by starting civil or bankruptcy proceedings against individuals, not for any good cause, but merely for the spiteful purpose of embarrassing and discomforting them. The lack of good cause is proved by a withdrawal of the charges against the victim or by the victim winning the case. It is then up to the victim to produce proof of the accuser's malice in initiating legal proceedings. An action for malicious prosecution sometimes succeeds when an action for false imprisonment might fail. The accuser may have done nothing personally to deprive the victim of liberty but the false accusations may have led someone else; e.g. a police officer, to make an arrest.

Case:

The manager of a High-Low Foods store in British Columbia saw Mr. Lebrun, a customer, put a carton of cigarettes into a shopping cart. He left the cart unattended while he was out of sight in another part of the store for less than a minute. He then went to his car before returning to finish his shopping. At the check-out counter, Mr. Lebrun's purchases did not include the cigarettes, nor had they been replaced on the shelf where they came from. Without any comment concerning this, the manager called a policeman and told him that Mr. Lebrun had been seen picking up the carton and that he had left the store without paying for it. A search of the car by the policeman did not reveal the cigarettes. Mr. Lebrun won his malicious prosecution case against the store manager on the grounds that the facts were not sufficient to create a reasonable suspicion in the mind of a reasonable man; it was quite possible that the cigarettes had dropped out of the cart or had been picked up by somebody else. Technically, Mr. Lebrun had suffered temporary imprisonment. Although the policeman had requested permission to search the car, Mr. Lebrun only gave it because he thought he had no choice in the matter and that he was under false arrest. The action against the policeman for false imprisonment failed, however, because his actions were based on reasonable and probable grounds.

TRESPASS TO LAND

It is important to distinguish between those persons who enter the premises of another on the invitation of that other person, and those persons who enter as trespassers. The occupier of the premises has a higher degree of responsibility to an invitee than towards a trespasser. In the latter case, the occupier of premises is required only not to set traps which can cause injury to a trespasser, but is otherwise not required to remove or remedy any conditions so as to protect trespassers.

The problem arises of determining who is or is not a trespasser rather than an invitee. Clearly, anyone who actually visits the premises of another upon the specific invitation of the latter would be an invitee. In this case, the occupier of the premises is obligated to take precautions to see that the premises are reasonably safe and that guests will not be injured by any dangerous conditions. On the other hand, what is the responsibility of the occupier of the premises to the people who are not specifically invited on the property, but who enter the premises without invitation for purposes of doing business, such as canvassers, or door-to-door salespersons? The law implies an invitation to such persons to enter for the purposes of trading or negotiating trade, unless they are specifically required to stay off the premises by the posting of notices, such as "No Salespersons or Canvassers Allowed."

In some cases the problem arises as to who is or is not the occupier of premises. For example, if a person occupies an apartment in a large apartment building and invites someone to do business, and such person is injured by a dangerous condition which exists in the corridors of the building, should the apartment tenant then be liable? The actual occupier of the corridor is not the tenant because the tenant does not have exclusive right of possession over the corridors, nor care and control over them, in normal circumstances. The occupier of the corridor in this case would be the owner of the building itself.

Again, the law must decide who is the occupier of premises which are owned by one party but leased out to another. Suppose, for example, a person owned a building and rented the main floor for use as a grocery store. Suppose further that a customer of the store entered, and was injured when the floor collapsed. The court in such a case must determine whether the tenant or grocery store operator should be held responsible. The test applied in such cases would be to determine who was the occupier in the sense of having the care and control of the premises, including the obligation to keep them safe. In other words, it is not ownership of property which determines liability in such cases, but actual occupation.

A person's right to land extends not only to the surface, but also into the ground underneath it, provided no one else is entitled to the mineral rights. Subject to this exception, anyone burrowing under someone else's land commits trespass, such as by extending a cellar under a neighbor's property. If a large deposit of oil stretches over the property belonging to many landowners, there is nothing to stop one person from sinking an oil well and pumping all the oil out. Theoretically the person is pumping out only the oil beneath the person's own property, although other oil keeps flowing under this property as pumping continues. The neighbors also have a right to sink wells to see who can get the most oil out the fastest. If on the other hand, your neighbor is mining, and is following a gold vein, the neighbor has to stop upon reaching the boundary of your property.

In theory, a person's land rights also extend into the heavens. People enjoy protection, unquestionably, against anyone's stringing wires over their property without proper authorization, or a neighbor's building an upper storey to a house which projects over their land. An airplane pilot would be liable for dropping something injurious on their land; or for "buzzing" their property, scaring their family, or animals. As stated, simply flying overhead constitutes trespass technically, but to protect military and commercial pilots from possible trespass actions, they have legal immunity when flying on their prescribed routes and altitudes. A landowner cannot deliberately interfere with air traffic by erecting obstacles out of spite. Airplane owners cannot demand that landowners do not erect objects which get in their way if they are put there for legitimate purposes.

The Petty Trespass Act

This statute provides that, if a person has had notice by word of mouth, or in writing, or by posters or sign boards not to trespass, no person shall trespass on privately owned land, or on land owned by the Crown. Even if there is no damage, a person who trespasses is liable to a fine.

If someone is found committing a trespass, the person may be apprehended without a warrant by any peace officer, or by the owner or occupier of the land on which the trespass is committed, or by an employee or other person authorized by the owner or occupier of the land. The apprehended person must be taken as soon as possible, under the circumstances, before the nearest provincial judge or justice of the peace.

This Act does not apply to cases in which the ownership of the land is questioned. It does not apply to cases where persons trespassing acted under a fair and reasonable supposition that they had a right to do the act complained of.

Water Rights

It is difficult to describe exactly who owns the water running through or past land because various parts of the world have enacted special laws dealing with this question. Quite often the title which the property owner acquires spells out these water rights. However, the traditional common law viewpoint towards water rights is applicable in most cases. Landowners have no property right to any water that comes up through a natural spring or well, or flows through their land in a defined channel such as a stream bed. That is to say, they do not own the water as they do the land. However, they are permitted to use the water to a certain extent, depending upon where it comes from and where it flows.

In the case of a spring or well, the landowner can draw off any or all of it without regard to the claims of neighbors, since there is no chance it would flow to their property anyway.

As to water flowing along a stream bed, the common law rules are more strict. Landowners can use the water flowing through their land, but they cannot use all of the water, and they cannot divert it or dam it up as to deny their neighbors the use of it. The common law also denies them the right to pollute the water so as to make it unuseable to others. They can take fish from the water and prevent anyone else from taking fish from the water where it flows through their land. If the body of water is large, they cannot deny other persons the right to navigate through or past their property, but can still prohibit them from fishing.

The ordinary and reasonable use which landowners are entitled to make of water flowing through their property is to take and use the water necessary for ordinary purposes, such as their own drinking and that of their animals. The landowner in this case is referred to as the riparian owner and can exhaust the water supply if it is necessary for reasonable use. If the supply is adequate, the riparian owner could also divert some of it to irrigate fields and in the case of manufacturing to use it for factory needs. In this case, reasonable use would require that the water not be completely exhausted since it would deny others use of the water for living purposes. Apart from these uses, a riparian owner cannot take water from a stream without permission of the community authorities or, in some cases, without provincial licence.

Theoretically, the owner of the land along one bank of a non-navigable lake or stream is deemed to have riparian rights up to the middle of the lake or stream. However, where the water is tidal (rises and falls) the land between the high and low tide water marks is Crown land and no one can claim private rights over it. Ownership of the shore, and riparian rights to the water is not the same thing as owning the bottom of the lake. Thus, landowners cannot extend the size of their property by filling in a large portion of the lake that existed naturally and claiming ownership of the enlarged area.

TRESPASS TO GOODS (CHATTEL PROPERTY)

Trespass to goods consists of injuring another's property, however slightly, whether deliberately or not. If done deliberately, the awarded damages might be more severe. Trespass to goods also consists of taking things from their owner, or anyone else who is in rightful possession of them, even if no damage is suffered by the possessor or by the goods.

Trespass can also be committed by using another's belongings without consent. Even if the property suffers no harm, substantial damages may be awarded against someone who uses it defiantly. Consent, however, need not always be granted expressly; it can often be implied. For example, the use of the goods may have been freely permitted in the past; or the alleged trespasser had assumed that permission to use the goods would not be refused, in view of similar favors extended in the past.

There are various ways that a person may commit trespass to chattel (personal) property. They generally fall into one of these two categories:

1. Conversion - an action for conversion alleges that the defendant is interfering with the owner's possession or right to possess and depriving the owner of the use of the chattels. It must so seriously interfere with the right of the owner to control it that the meddler may justly be required to pay for the chattel. There are basically six ways one could commit conversion:
 - (a) selling someone else's goods (even if you thought they were your own),
 - (b) giving someone else's goods to the wrong person, or refusing to give them back when the true owner asks for them,
 - (c) holding onto the goods after the owner asks for them and using them as if you were the owner,
 - (d) destroying the goods (again, even if you thought they were your own, but they weren't),
 - (e) selling, giving away, losing, etc. the documents of title to the goods so that the owner is deprived of them,
 - (f) any other dealing with the goods which tends to prevent the owner from getting them back.
2. Detinue - is a refusal to return goods to their owner after the owner asks for them. Thus all detinue can also be conversion. The difference is that if you sue in detinue, you are trying to get the goods returned to you. If you sue in conversion, you are only trying to get monetary compensation for them.

While trespass to chattels is usually done intentionally, it may be done accidentally. Yet, the wrongdoer remains liable. For example, if Henry believes, although mistakenly, that the chattel is his or that the owner consented to his taking it, he is still liable. It is no defense that Henry honestly believed that he had a right to do what he did with the property. Henry might also be inclined to argue that he did no harm to the goods in question. This argument is not a valid defence since damage is not necessarily part of conversion. Even if he took the utmost care of the article, the court would only consider whether or not the holder had a legal right of possession.

The action of trespass is mainly aimed at protecting actual possession. An owner who is temporarily out of possession of chattels cannot bring an action for trespass except when a demand is made for the return of the goods and this demand is denied (detinue), or if there were an intention shown to detain the goods adversely to the owner.

When dealing with conversion, the question arises of accidental loss. Is it conversion if persons lose property entrusted to them? We have a problem here because another aspect of law enters into the picture, a contractual relationship called a bailment. A person who entrusts chattels is called a bailor, and the person who has the chattels is the bailee. The law of bailment covers most situations where the property has been damaged or lost.

Conversion arises out of a contract of bailment when the holder deliberately intends to interfere with the owner's right to the property - depriving the owner of it. This would be in the case of a bailee who refused to return the goods for some reason. There must be a positive act of malfeasance (wrong doing) - such as a continued refusal to return them and perhaps trying to conceal the fact that the chattels are lost.

Merely having possession of another's property is not necessarily wrong. If you find a wallet on the street, it would be reasonable to pick it up and retain it for the owner. A person who rented goods and does not return them on time may be guilty of breach of contract, but not conversion. Nor does the finder of goods have to hand them over if the owner cannot establish lawful ownership. A person who advertises having found a large quantity of money will be contacted by many false claimants. It is reasonable that the finder invent some test whereby only the true owner can identify the goods. In fact, if a finder carelessly surrendered chattels to a false claimant, the true owner might hold the finder liable for conversion for delivering the chattels to the wrong person.

Ordinarily, the person who finds a chattel acquires a good title of ownership to it against all others, except the true owner. However, the question of where the chattel was found may have a great deal to do with it. Courts have generally held that the landowner has the better claim. In theory, the owner of the land owns everything in it or on it, at least temporarily.

Case:

Martin was working for the water company cleaning out a pool on the water company's land. He found two gold rings in the pool and claimed them, refusing to give them to the water company. The court ruled he must return them over to the water company insisting it was a matter of property rights.

In most cases, after a reasonable effort to locate the true owner, the chattel reverts to the finder. There is no specific time limit on how long one must wait, and the possibility that the true owner might show up must be reckoned with. There is no automatic obligation to turn chattels found over to the police, although some people do so because they do not want the responsibility of keeping them. The police may insist upon confiscating them if the chattels are believed to be stolen, if they are evidence of a crime, or if they are illegal in themselves.

Suing for Damages

Persons deprived of the use of their property are ordinarily entitled to the full value of the property if they can't recover it. They may also sue for any special loss suffered because of the unlawful conversion. The court may also agree to award punitive damages because of the very arrogant behavior on the part of the person who took the property.

Case:

Mark bought a new car and financed it through the defendant. He made all his payments on time, but kept receiving notices that he was behind on payments. He called the finance company and asked for a clarification and was told not to worry, the company was having trouble with a new computer. He continued to receive late notices and finally his car was repossessed. He took his cancelled cheques to the office and demanded his car back. The manager refused to return the car unless Mark would sign a statement that he would not sue or hold them liable for any damage done to the car. Mark left without the car and sued for conversion. He asked for his car back and \$2,000 punitive damages. The finance company admitted their error but contended that \$2,000 was excessive. The court did not agree and awarded Mark exactly what he had asked for, noting the insolent behavior on the part of the company when dealing with a customer.

In the preceding case the plaintiff wanted his chattels back. However, plaintiffs do not necessarily have to take them back. It is usually their choice as to whether they want the goods or the monetary value of them. The goods may be damaged or altered in such a way that they cannot use them any longer. If the plaintiffs definitely want the goods back, they ask the court for an *Order of Replevin*. This order is not final, but only instructs the bailiff (an officer of the court) to seize the goods and turn them over to the plaintiffs. It is conditional on the agreement that the plaintiffs intend to establish that the goods were unlawfully converted. If they fail in this respect, the goods will be given back. The plaintiffs are required to post a bond to guarantee this promise.

Reclaiming of Chattels

Normally, individuals may retake their own goods either peacefully or by force provided they use only the force necessary. It is not clear how far one can trespass to recover goods, but it has been accepted that a person may enter another's land to recover goods when:

1. the goods are hidden there by the occupier, or
2. the goods were hidden there by the criminal act of a third party.

The occupier may refuse to allow entry, but such refusal can be understood as proof of conversion. If the occupier gives permission to enter, the occupier cannot later sue for trespass.

If a child's ball goes onto a neighbor's property, it would customarily be acceptable to retrieve it, provided property damage does not occur. The ball does not become the property of the neighbor. A repeated intrusion can be stopped by the neighbor on the grounds that it is becoming a nuisance. That is, one such incident is an accident. If it happens repeatedly, it is no longer an accident and must be stopped. While looking for his son's stolen bicycle a man walked through many back yards and found it. He was justified in seizing it where he found it. In another case, a woman who thought she knew who had taken her appliance walked into the apartment and found it. She was justified in her action since she did not use force. Had she been wrong and not found it, she could herself be found liable for trespass. It was a calculated risk which she undertook.

When borrowing money, it is common to put up valuable chattel property as collateral for the loan. A chattel mortgage transfers ownership of the chattel to the person who lends you the money. You are allowed to retain the article, and when all payments are made, title returns to you. If you miss a payment, the mortgage contract permits the owner to come and take the chattel. The mortgage permits the owner to take whatever action is necessary to get the chattels, and you cannot hold the owner liable for trespass.

Most provinces have a Conditional Sales Act which deals with repossession of articles bought on time and not paid for. Most conditional sales contracts allow repossession if payments are not made. Alberta law does not allow the use of force to be used to repossess. If the buyer is hiding the article from the owner, the owner must get a court order to repossess forcibly. The force will be applied by the court officers who accompany the owner to get the property.

Exercise 1

Define the following terms. If you are unsure as to the meaning of any particular word refer to your lesson notes or a dictionary.

- 1. assault - _____

- 2. bailor - _____

- 3. bailee - _____

- 4. chattel - _____

- 5. conversion - _____

6. defendant - _____

7. detainee - _____

8. false imprisonment - _____

9. immune - _____

10. invitee - _____

11. litigation - _____

12. malicious prosecution - _____

13. plaintiff - _____

14. riparian owner - _____

15. tort - _____

Exercise 2

Indicate whether each statement is true or false by circling **T** or **F** in the space provided. Be sure to check your answer with the lesson notes.

- | | | |
|---|---|--|
| T | F | 1. The function of criminal law is to shift the loss from the victim to the person who inflicted it. |
| T | F | 2. Children enjoy no immunity from tort actions being brought against them provided they have reached the age of reason. |
| T | F | 3. It is obvious that no system of law will ever attempt to compensate persons for all losses. |
| T | F | 4. Under any circumstances there is no legal obligation on the parents to pay for damage caused by their children. |
| T | F | 5. A husband is responsible for his wife's torts. |
| T | F | 6. Under no circumstances are employers liable for torts committed by their employees. |
| T | F | 7. The terms "assault" and "battery" mean the same thing. |
| T | F | 8. The tort of assault cannot be committed without some degree of intention. |
| T | F | 9. For a suit of assault to succeed there must be at least some reasonable expectation that the threat can be carried out. |
| T | F | 10. One may commit an assault merely through the use of words. |
| T | F | 11. Failure to obtain consent permits a patient to sue the doctor for assault and battery. |
| T | F | 12. The parents' rights to discipline their child ends when the child reaches fourteen years of age. |
| T | F | 13. Unintentionally confining a person does not constitute false imprisonment. |
| T | F | 14. Persons wrongfully convicted of an offence may later sue the judge who sentenced them to prison. |
| T | F | 15. An action for malicious prosecution may succeed when an action for false imprisonment would fail. |
| T | F | 16. The occupier of premises has a higher degree of responsibility to an invitee than towards a trespasser. |

- T F 17. In theory, a person's property rights extend into the heavens.
- T F 18. Even if there is no damage, a person who trespasses is liable to prosecution.
- T F 19. Landowners also own any water flowing through their property.
- T F 20. Using another person's property without consent may constitute trespass.
- T F 21. The person who finds a chattel acquires a good title of ownership to it against all others.

Exercise 3

Fill in the blank spaces in the following statements; only one word is required for each space.

1. _____ law is concerned with penalizing the accused person in order to protect society as a whole.
2. _____ liability exists to compensate persons injured through others' wrongdoing.
3. Tort law is more concerned with the conduct of individuals than with their _____.
4. Changes to tort law will continue to be influenced by increases in _____.
5. It has been held to be _____ negligence by the parent when a child caused damage in the parents' presence.
6. The _____ takes the position that what individuals think must be deduced from what they say and do.
7. _____ is actual harmful or offensive physical contact to another person.
8. Successful plaintiffs in assault cases may be awarded _____ without having to prove that they suffered any monetary loss.
9. An act directed toward one person is actionable if it causes _____ in a witness to the act.

10. School teachers are legally considered _____
_____ and may discipline students in their care within reason.
11. To deprive individuals of their _____ for even a short period of time is usually considered to be imprisonment.
12. In matters of _____ law, the Crown can do no wrong.
13. It is not the ownership of property which determines liability, but actual
_____.
14. _____ arises out of a contract of bailment when the holder deliberately intends to interfere with the owner's right to the property.
15. An Order of Replevin instructs the _____ to seize goods and turn them over to the plaintiff.
16. A _____ mortgage transfers ownership of personal property to the person who has lent money.

Exercise 4

For each of the following situations decide if the facts add up to an assault and state the reasoning behind your answers.

1. A phones B and says she is coming over to kill him.

2. B is on his 5th floor balcony and A shouts from below that he is coming up to break both of B's legs.

3. B is sleeping on the beach. A walks over with the intention of stepping on B's face. B's friend sees and stops A just in time from carrying out her intention. B wakes up and the friend relates the incident. B faints and hits his head on a rock seriously wounding himself.

4. A mother tells her child "I'm going to wring your neck."

5. A and B are walking down the street. B is a block ahead of A. B looks back to see A pointing a gun at him. B runs into a store and later sues A for assault. A's defence is that the gun wasn't loaded.

Exercise 5

1. (a) Suppose a little man shakes his fist in the nose of a heavyweight champion. Does this constitute an assault? Explain.

- (b) What if the little man shakes a gun in the face of the heavyweight champion. Assault?

2. Suppose a young girl agrees to let a young man drive her home in his car. When she discovers that he is going in the opposite direction she tells him to let her out. He informs her, as he speeds along at 90 k.p.h., that the door of the car is not locked and that she is free to go. She chooses not to jump. Has imprisonment occurred? Explain.

3. Is it trespass if the defendant's tree is allowed to grow so that its branches extend over the plaintiff's land? _____ Is the plaintiff liable if he snips off the branches that hang above his land? Explain.

4. Suppose B places a storage cellar 20 feet below the surface of A's property. Has B committed trespass? Explain.

LESSON RECORD FORM

3430 Law 30

Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

(If label is missing
or incorrect)

File Number

Time Spent on Lesson

Lesson Number _____

Student's Questions and Comments

Apply Lesson Label Here

Name _____

Address _____

Postal Code _____

Please verify that preprinted label is for
correct course and lesson.

FOR SCHOOL USE ONLY

Assigned

Teacher: _____

Lesson Grading: _____

Additional Grading

E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

Lesson Recorded _____

Teacher's Comments:

Correspondence Teacher

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

- (1) All pages are numbered and in order, and no paper clips or staples are used.
- (2) All exercises are completed. If not, explain why.
- (3) Your work has been re-read to ensure accuracy in spelling and lesson details.
- (4) The Lesson Record Form is filled out and the correct lesson label is attached.
- (5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do **not** enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a **green first-class sticker to the front of the envelope, and seal the envelope.** Correspondence lessons will travel faster if first-class postage is used.

Try to mail each lesson as soon as it has been completed.

When your register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

NEGLIGENCE

Negligence can be described as careless conduct on the part of one person which causes injury or suffering to another. The problem is to determine what is, or is not, a careless act. What standards should the court set, by which individuals might govern themselves in their relationship to others so as not to invoke liability for causing injury to another? In some cases, the law itself sets down a standard, described as a statutory standard of care, which is generally the minimum precaution persons must take. The test most often employed in our courts is that of the reasonable person. Its use is illustrated in the following cases:

Case:

The defendant, along with a number of others, was conducting a cricket match. One of the players hit the cricket ball over a wall surrounding the cricket field onto an adjoining side street where it struck a passer-by, the plaintiff in the case. The passer-by sued for his injuries, and argued that it was careless or negligent to conduct a cricket match under conditions whereby it was possible for a ball to be hit over the wall of the field and into the street as actually happened. The evidence revealed that this had only happened five or six times in the history of the cricket field, and that in the vast majority of instances a ball could not be hit out of the cricket grounds.

The plaintiff argued that so long as the defendants knew that it was actually possible to hit a ball out of the grounds, they should have taken steps to prevent this from happening. The defendants argued that this was extending the law of liability to too great a degree. Negligence, they argued, was primarily a test of what a reasonable or prudent person might do to protect the safety of others. They argued that in the circumstances it was unreasonable to take extraordinary precautions when in the period of a number of years only five or six balls had ever been hit out of the cricket grounds.

The court upheld the arguments of the defendants, and observed that carelessness is not a question of protecting someone against the extraordinary or unusual happening.

Case:

Defendants had installed a fire-plug made according to the best known system. Due, however, to an exceptionally severe frost, damage was caused to the plug resulting in the plaintiff's premises being flooded. The plug had worked satisfactorily for twenty-five years. The trial judge stated, "The case turns upon the question, whether the facts proved show that the defendants were guilty of negligence. Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. The defendants might have been liable for negligence, if, unintentionally, they omitted to do that which a reasonable person would have done, or did that which a person taking reasonable precautions would not have done. A reasonable man would act with reference to the average

circumstances of the temperature in ordinary years. The defendants had provided against such frosts as experience would have led men, acting prudently, to provide against; and they are not guilty of negligence, because their precautions proved insufficient against the effects of the extreme severity of this particular frost, which penetrated to a greater depth than any which ordinarily occurs south of the polar regions. Such a state of circumstances constitutes a contingency against which no reasonable man can provide. The result was an accident, for which the defendants cannot be liable."

Case:

The infant plaintiff, aged 5 years, attended a kindergarten school. The defendant taxi company transported children to and from school under contract with the school. Children carried ranged from 3-6 years of age with a few up to 8. The taxi in question was a normal 4-door sedan. Each door was equipped with a handle for opening the door and a push button which, when down, locked the door and prevented it being opened from within or without. The driver of the taxi said she was always careful to see that the button was down before starting the car. On the day in question the taxi had seven or eight children passengers. After delivering two or three the driver noticed the plaintiff playing with the push button on the left rear door. The driver told her to stand away from the door and she did. The driver then made certain the push button was down and continued. Shortly afterwards, the left rear door opened and the infant plaintiff fell out and was injured. In deciding this case the trial judge stated, "This push button was within easy reach of every child in the rear seat of the automobile. Moreover, that it could be raised up and pushed down was made evident to each child every time the driver opened or closed that door. The operation of the push button and the handle were being constantly brought to their attention. In these circumstances it would be expected that the children would be drawn toward them and heedlessly to put them in operation. Moreover, that there is a danger or a circumstances of peril when children are placed in the rear seat of a 4-door sedan is supported by the evidence. Some parents take the precaution to purchase the 2-door type. Other parents, however, equip their 4-door sedans with safety devices. These devices are not complicated and anyone with mechanical ability could place a workable device upon an automobile which would insure the door remaining closed even if the children should meddle or play with the push button and the handle. The foregoing indicates that parents appreciate the need for either safety devices or supervision when young children are being conveyed in a 4-door sedan. That these devices have been developed and placed upon the market would suggest that the apprehension of danger is generally recognized. The possibility of an automobile rear door opening without being meddled with is very remote. The precautions suggested above are taken because of the propensity of small children to meddle with that which attracts them. It would, therefore, appear that a reasonable man, assuming an obligation to transport children from the ages of about 3 to 6 years in a 4-door sedan equipped with push button and door handle, as in this case, would foresee the possibility of these small children meddling or playing with the push button and the handle and foresee the danger or peril consequent upon their doing so, and would take such precautions as would either prevent them playing with the push button and the handle, or if they did so, remove the possibility of dangerous consequences ensuing. It would therefore appear that the defendants

in conveying the children in the above described 4-door sedan, without safety devices and no greater degree of supervision than could be exercised under the circumstances by the driver, were negligent."

Negligence then, is not a state of mind but involves conduct that falls below a certain standard regarded as normal or desirable in a given community. Negligence is not an intentional tort, but concerns unintentionally or inadvertent harm related to the impersonal standard of how a reasonable person would have acted in the circumstances. The reasonable person is presumed to be free from over-apprehension and from over-confidence. Some groups of people, such as members of the medical profession, whose work involves a special skill must not only exercise reasonable care but also measure up to the standard of competence of ordinary skilled persons professing to have that special skill in the discharge of their duties.

Negligence in the Operation of Motor Vehicles

Automobile negligence covers all elements of any negligence case, but is subject to special rules created by statute in addition to the rules of common law. The automobile is a very dangerous device. The large number of them coupled with the high speeds they attain, make accidents frequent and deadly. Added to the natural dangers of the automobile itself, is the low calibre of many drivers. Some are given to foolish behavior and recklessness. Others are impaired by drugs or alcohol. Some have poor eyesight and reflexes. All of these factors create a high incidence of destruction on the highway. Consequently, the provinces have enacted special legislation assigning specific responsibilities to drivers and owners of motor vehicles.

The owner of a motor vehicle, as well as the driver, is liable for any loss incurred by a person because of negligence in the operation of the vehicle. When ownership of the vehicle is determined, the burden of proof then passes to the owner to show that the vehicle was being used by someone without consent. A good defence would be if the owner could show that the vehicle was stolen. In such a case the owner could not be held liable if the vehicle is misused by someone who had no right to have it. However, the owner cannot avoid liability simply because a person who had permission to use the vehicle did not obey instructions. For example, if a man lends his car to his neighbor, and his neighbor allows his son to drive it, even though he is in the car with him, the owner is still liable. This holds true in spite of the fact that the borrower disobeyed his wishes not to let anyone else drive. This kind of liability is called vicarious liability which means that the law holds one person liable for the misconduct of another.

The owner or driver of a motor vehicle is normally not liable for injuries suffered by passengers unless the vehicle is being used for the business of carrying paying customers, such as a taxi or a bus. A gratuitous (non-paying) passenger assumes a foreseeable risk when accepting a ride. This risk is the normal hazard of highway driving. Under the principle of assumption of risk, no claim can be made by passengers against the driver unless they can show that what happened was beyond the usual risk of driving. For example, a group of hard drinking friends cannot race around all night with an intoxicated driver at the wheel, and then sue the driver when the car finally crashes. The court would have no compassion with those who willingly took part and then tried to blame the driver for what happened.

When a motor vehicle hits a pedestrian or some property other than a moving vehicle, the burden of proof as to what caused the accident lies with the driver. Drivers must show that they were not at fault, otherwise the court will assume that they were not driving with due care and attention.

Persons guilty of contributory negligence may receive reduced compensation depending upon the extent to which they contributed to their own injuries. They may even receive nothing at all. The reasoning here is that, where persons fail to take any opportunity available to prevent injury to themselves, they cannot expect full compensation for their injuries from someone else.

Case:

A motorist was driving down a narrow roadway at a speed of about 12 to 15 kilometers per hour. She anticipated that there might be pedestrians crossing, and had slowed down for that reason. The plaintiff and another woman stepped out from between parked cars into the path of the defendant's car without looking. The defendant immediately applied the brakes, which were in perfect working order, but the plaintiff was struck and injured. The trial judge held both the motorist and the pedestrian liable, declaring them to be equally at fault. However, upon appeal this decision was overruled. The higher court held that the defendant had in fact been driving at a reasonable speed, and had taken all precautions to avoid an accident. The onus then fell on the pedestrian to satisfy the court that the motorist had failed to do something, as the result of which she was injured. Since the pedestrian had stepped out between parked cars, she was held one hundred per cent responsible for the accident.

Essentials of Proof

The handling of a tort case requires a certain order of presentation of evidence. There are several elements that must be proven, including:

- (a) duty of care,
- (b) required standard of care,
- (c) proximate cause, and
- (d) foreseeability.

The lawyer for the injured party tries to organize the case to satisfy these elements of proof. Not every case contains all these elements, but in any given case you will find most of them.

1. Duty of care - the plaintiff must show that there existed a duty of care, recognized by law, governing the conduct of everyone for the protection of all others. The duty of care implies that the defendant has assumed control of an article which, from the defendant's actions or failure to act, could cause injury to someone else. A person who drives a car has a duty of care to other motorists, pedestrians, passengers, and property. If it can be shown that the defendant did not have a duty of care to anyone, including the plaintiff, the defendant is not liable for negligence.

Case:

The defendant operated a school and nursery. A child of four strayed from school property on to the highway. A truck driver, Lewis, swerved to avoid the child and hit a pole. Lewis was killed and his widow sued the defendant. The trial judge awarded damages to Mrs. Lewis and the defendant appealed. The case hinged upon the basic question, "Did the school authorities have a duty of care not to allow children to stray on to the highway because it represented a danger to motorists?" No one was arguing that the school had a duty of care to the children, but such duty of care is not the same thing as a duty of care to motorists passing the school. The court of appeal upheld the lower court and held that the school authorities had a duty of care to insure that children did not stray on to the highway and thereby cause passing vehicles to crash.

Case:

The defendant, a surgeon, removed a child's tonsils and adenoids using sponges without tape or strings attached and without having a nurse present to check on the sponge count. After the operation the child suffocated and died because a sponge had been left in his throat. In an action brought by the estate of the child for damages, the surgeon gave evidence that his anaesthetist had suggested all sponges were not out and he thereupon made a search with his fingers and forceps but found none. He admitted that he made no count of sponges and testified that it was not his practice in operations of this kind to use sponges with strings attached nor to have a nurse check the sponge count. This appeared to be the practice in the hospital where the operation took place, a nurse testifying that in 1,000 tonsil operations in which she assisted she had never been asked to arrange for a sponge count and that the use of sponges with strings was very rare. Medical testimony was also to the effect that while sponges are always counted in abdominal operations, in an "open space," counting is not done. At another hospital in the same community however, string on sponges were used in operations of this kind. In deciding this case the Manitoba Court of Appeal stated, "The practice of medicine and surgery is a progressive science. Experience had shown in the past the danger of leaving foreign substances in the cavities after an operation and, in relation to the use of sponges, two different methods had been adopted. It is not sufficient for the surgeon to say: 'I never adopted the use of either of such precautions in operation of this nature.'" By doing so he took an unnecessary risk, as both were available for his use on that occasion and he assumed full responsibility for the lack of use of same, and he was negligent in so doing. Furthermore, after having been warned by the assistant that he did not know whether or not there were any sponges left, he was negligent in not making a more thorough search." The Supreme Court of Canada upheld this decision.

2. Required Standard of Care - having established that the defendant did owe the plaintiff a duty of care, the court must then examine whether or not the amount of care required was met. Negligence can be constructed as conduct falling below the standard or amount of care a reasonable person would provide under the circumstances. This "reasonable person" is someone who is always quite careful, always noticing things or situations which are dangerous, and takes precautions against that danger. A reasonable person isn't perfect, though. Even such a person could cause injuries since even the most careful person can't avoid creating some risks. However, a reasonable person will not take or create an unreasonable risk. A risk is unreasonable when the benefit to be gained from a certain activity or situation is outweighed by the possible harm which could result and the likelihood that some harm will result.

Often we take only those precautions that everyone else takes in the same situation. But the court during a negligence trial may look at the usual precautions and decide that these are not enough. In other words, the court could say that there is still too much danger and that a reasonable person would have taken more precautions than everyone in fact does in a given situation. If a court decides that the normal custom is unreasonable, then people have to start being more careful than they have been. This happens when a court brings down what is called a "landmark" decision.

Case:

As the plaintiff's car, in the passing lane of a highway, came abreast of the defendant's car, in the driving lane, the left front wheel came off the defendant's car and lodged under the plaintiff's. The plaintiff's car travelled suspended by the wheel for approximately 30 meters and then crashed to the road, causing damage to the undercarriage. The defendant testified that just before the accident he had heard peculiar noises coming from the front part of his car and he had pulled on to the shoulder of the highway and stopped. He said he got out, checked the wheels and shook them, and then pulled back on to the highway and was proceeding slowly, when the front left wheel came off and went under the plaintiff's car. The court held that the owner and driver of a motor vehicle cannot be expected to be an insurer of its mechanical perfection at all times. However, driving with defective apparatus is a negligent act if the defect might reasonably have been discovered. The defendant here was driving an old car, with high mileage. He, as was to be expected, had had a considerable number of mechanical problems. He was driving on a busy highway when unusual noises, of some intensity, emanate from the front of the car. He pulls off the highway and does not take reasonable action to ascertain the cause of the noise. He then proceeds on to the highway again and after travelling approximately 5 meters, the wheel comes off causing an accident. It was the court's view that the defendant was negligent in two respects. First, had he checked the wheel properly he would have ascertained it was loose. Secondly, he proceeded out on to the highway knowing his vehicle was defective, and consequently imperilling other persons on the road. There was no negligence on the part of the plaintiff.

Case:

The plaintiff and his wife were injured when an old elm tree on the defendant's property fell on their car parked on an adjacent street. The roots of the tree were diseased but an external investigation by an expert would not have revealed the damage as the disease had taken an unusual course. The court was of the opinion that the plaintiff had established that the defendant had a duty of care to have the tree inspected, since it was reasonable to foresee that it could constitute a hazard. But the plaintiff must further prove that reasonable inspection would have revealed such danger, otherwise it cannot be said that the omission to have the tree inspected was the real cause of mishap. Since it was shown that even expert investigation would not have uncovered the danger, the defendant cannot be held responsible for not having known what an expert could not know either.

Case:

One Sunday morning the plaintiff fell while working in his cattle barn on his farm. In falling, he broke his left forearm, fracturing both the radial and ulnar bones at the mid-third of the forearm. Either the radius or the ulna punctured the flesh causing a compound or open fracture. The plaintiff was then taken to the defendant for medical treatment. The defendant was a general practitioner who graduated with a degree in medicine. The defendant looked at the plaintiff's fracture at about 11:30 A.M. on the same day. The defendant looked at the wound which was oozing blood. The arm was x-rayed. The plaintiff was put under an anaesthetic. The defendant spread the wound with forceps but did not observe any foreign material in the wound. The tissue which he saw looked alive and with the blood oozing, the defendant's judgment was that the wound was a clean one. Very probably from the bone perforating out and the absence of any sign of foreign material, the defendant was led to the conclusion that the wound had not been contaminated. The defendant soaked gauze in merthiolate and applied it around the wound. The defendant then proceeded to set the fracture and the arm was placed in a cast. The defendant made periodic checks of the plaintiff and instructed a dosage of penicillin and streptomycin twice a day. On the same Sunday afternoon he noted some swelling of the arm which he concluded was not excessive and noted that when he, the defendant, touched the plaintiff's hand, the return of color seemed to be adequate. The defendant personally checked the patient's condition on the Monday morning between 9 and 10 A.M., noted the circulation was probably not as good as it should be, noted excessive swelling, and made a saw cut in the upper and lower ends of the cast so as to loosen it. On the same Monday afternoon, he made a further cut in the cast because the circulation still had not improved. On Tuesday morning, the defendant became somewhat alarmed about the circulatory changes in the plaintiff's hand, concluded the plaintiff was running into considerable difficulty probably with spasms of blood vessels following the injury, concluded the plaintiff needed the services of a specialist, telephoned Dr. Gordon Wilson, a specialist in orthopaedic surgery, and arranged that the plaintiff be taken to the University Hospital in Edmonton for an examination by Dr. Wilson. The plaintiff arrived at the University Hospital on the same Tuesday afternoon, was seen by Dr. Wilson, who diagnosed acute gangrene and immediately amputated the plaintiff's arm at a point some three inches below the elbow. The plaintiff alleged that the arm was lost as a result of

negligent treatment by the defendant. Much medical evidence was called by both sides. Testimony by expert witnesses showed that nine out of ten doctors would have treated the wound in the same manner as did the defendant, but other treatment could have avoided the gangrene and subsequent amputation. The court dismissed the suit because, if medical experts could not agree whether or not there was evidence of negligence, the court could not decide. The burden of proof was on the plaintiff to show that the doctor owed him some greater duty of care than he practiced. This evidence he failed to show.

3. Proximate Cause and Remoteness - there must be some reasonable relationship between the defendant's actions and any injury or loss sustained. Such a relationship is known as the proximate cause, however, if no such relationship exists the case will be dismissed on the grounds of remoteness. In many cases the question is not whether the defendant committed a certain act, but rather if the defendant's actions had an injurious effect upon the plaintiff.

If it is found that a chain of events is unbroken and not of a freakish nature, then liability will rest upon the person who started the chain. However, a valid defence could be established if it could be shown that another act, which was distinct and separate, had entered the chain and created an entirely new and unforeseen situation. Such an intervening act is called a *novus actus interveniens*, and has the effect of breaking the chain and therefore the cause is too remote from the effect for there to be any negligence on the party who started the chain. In some cases there may be a number of causes and the court must divide the liability among several people according to their degree of negligence.

Case:

Chapman drove his car negligently during a heavy fog and collided with a car in front of his. That car turned over and the occupants were trapped inside. Chapman lay unconscious on the highway. Another car stopped and Dr. Cherry got out and went to attend Chapman. Hearse came driving along, also negligently, and killed Dr. Cherry. Hearse was sue by Dr. Cherry's widow and had large damages assessed against him. Hearse in turn sued Chapman for starting the entire accident. The trial judge found that Chapman should pay 25% of the damages Hearse was ordered to pay Mrs. Cherry. Chapman appealed. Chapman's case centered on the question of *actus novus interveniens*. The death of Dr. Cherry, in Chapman's view, was caused by an intervening act, not a result of his hitting the car in front of him. Chapman admitted his liability to the man he hit, but no further. Hearse argued that it was not too remote to foresee that negligence could cause an accident which might also involve injury to those who came to render aid. Chapman's counsel argued that Hearse's negligent driving was an intervening act that severed the chain of liability between Chapman's driving and the death of the doctor. The appeal court stated, "There can, we think, be no doubt that Dr. Cherry's presence in the roadway was the result of Chapman's negligent driving. The degree of risk which his presence in the roadway entailed depended, of course, on the circumstances as they in fact existed and the circumstances were, in fact, such that the risk of injury from passing traffic was real and substantial and not, as would have been the case if the accident had happened in broad daylight, remote and fanciful. Confirmation that the risk was substantial may be found in the fact that within

a minute or two Dr. Cherry was run down by a driver whose vision of the roadway must have been impeded to a great extent by the prevailing conditions. In these circumstances, we have no doubt that Chapman's negligence must be regarded as a cause of Dr. Cherry's death and since some casualty was within the realm of reasonable foreseeability the judgment against Chapman must stand."

4. Foreseeability - this rule does not require that defendants know exactly the likely consequence of their actions, but rather that they could have reasonably foreseen injury would be caused to someone. In the preceding case, Chapman did not foresee that his negligent driving would cause the death of a doctor attending him on the road. However, he could foresee that negligent driving would cause injury or death to someone, that is, it was foreseeable that such behavior could lead to injury or death. Foreseeability is very much linked with the cause and effect question and remoteness. The general rule remains that persons are negligent only where they could reasonably foresee the consequences of their actions. Only in cases where the sequence of events was very unusual or abnormal is negligence denied.

In general, there is no duty to take action - only duties not to create risks. Thus there is no duty on anyone to rescue someone who is drowning. However, the person in the water does have a duty of care toward anyone who does attempt a rescue. This is because it is foreseeable that if you start drowning, someone may try to rescue you. If they are hurt in the attempt and it was your own fault that you were drowning, they could successfully sue you.

There are several exceptions to the general rule that there is no duty to take action:

- (a) if you have caused a dangerous situation (for example, if you knocked a sign onto the highway), you must act to remove the danger;
- (b) if you put someone in peril, you have a duty to rescue him (for example, if your reckless driving forces a cyclist into the ditch);
- (c) if you start a rescue, you have a duty to carry it out in a reasonable way, since other possible rescuers may not help when they see you already there;
- (d) if you ordinarily do act to protect people, you create a duty to do so all the time, because people rely on you;
- (e) if the government has passed a law which says you must take some action to protect other people, you may be liable if you fail to act.

Case:

Some Post Office employees had opened a manhole for the purpose of obtaining access to a telephone cable. The manhole from which the cover had been removed was near the edge of the roadway. A shelter tent had been erected over the open manhole. The manhole was some three metres deep and a ladder had been placed inside the manhole to give access to the cable. Around the area of the site had been placed four red warning paraffin lamps. The lamps were lit at 3:30 P.M. About 5 P.M. or 5:30 P.M. the Post Office employees left the

site for a coffee break for which purpose they went to an adjoining Post Office building. Before leaving they removed the ladder from the manhole and placed it on the ground beside the shelter and pulled a tarpaulin cover over the entrance to the shelter, leaving a space of approximately one metre between the lower edge of the tarpaulin and the ground. The lamps were left burning. After they left, the plaintiff, aged eight, and his friend, aged ten, came along and decided to explore the shelter. The boys picked up one of the red lamps, raised up the tarpaulin sheet and entered the shelter. They also brought a piece of rope which was not the Post Office's equipment, tied the rope to the lamp and, with the lamp, lowered themselves into the manhole. They both came out carrying the lamp. Thereafter, according to the evidence, the plaintiff tripped over the lamp, which fell into the hole. There followed an explosion from the hole with flames reaching to a height of ten metres. With the explosion the plaintiff fell into the hole and sustained very severe burns. The court held that the leaving of the lamps was negligence and the result of a curious child being burned was foreseeable. It is true that the duty of care expected in cases of this sort is confined to reasonably foreseeable danger, but it does not necessarily follow that liability is escaped because the danger actually materializing is not identical with the danger reasonably foreseen and guarded against. Each case must depend on its own particular facts.

Case:

The defendant was engaged in delivering gasoline from a tank car to a filling station when a fire started which spread to the tank car and the filling station. Many people were near and all of them ran from the scene raising loud shouts of fire, that the tanks were about to blow up, etc. The plaintiff was in her husband's store about twenty metres from the filling station. Hearing the shouts and seeing the fire, and with the object of fleeing, she turned to get her two-year-old child, about two metres away. In her hurry she fell over a misplaced chair and as a result of the fall suffered a miscarriage. In an action for damages, the court held that even though the defendant was negligent in the start and the spread of the fire, and that the defendant should have foreseen as a likelihood that bystanders would flee from the vicinity and would raise shout and clamour, and that the plaintiff would hear this and would investigate and then flee from the scene, yet the defendant could not be taken to foresee that the plaintiff in her preparation for departure would run over a misplaced chair in her own place of business. If the plaintiff did not see the chair, it would be too much to expect the defendant to have foreseen from across the street and through the walls of the building what the plaintiff didn't see right at her feet.

Res Ipsa Loquitur (The Act Speaks for Itself)

In civil cases the burden of proof is usually on the plaintiff. However, there may be some instances where the plaintiff is not able to determine just exactly how the defendant caused the plaintiff injury. In such a case, all the plaintiff can introduce is circumstantial evidence and let the absence of an explanation lead the court to conclude that the defendant was negligent even though it cannot be proven how. When an accident lacks a logical explanation the act speaks for itself. If the act speaks for itself, the burden is now on the defendant to show that the accident might have happened without negligence on his or her part. The defendant may try to show how the accident did happen.

Case:

An aircraft crashed while preparing to make a routine landing. All the occupants were killed. *Res ipsa loquitor* was applied, the trial judge merely saying that "with experienced and careful pilots and proper equipment a passenger has the right to expect that he will be carried safely to his destination."

The main purpose behind the rule of *res ipsa loquitor* is to prevent unfairness which would result if the burden of proof always rested upon the plaintiff. The fact that the defendant cannot explain what happened either because of an inability to understand from the evidence what happened or because the defendant died in the accident, does not relieve the defendant of responsibility when all the facts point to the defendant.

It would be wrong to assume that *res ipsa loquitor* applies to every case. It applies only to cases where the cause of the accident is unexplained. Once the cause has been positively identified, *res ipsa loquitor* no longer applies and the case must be decided on the ordinary tests for negligence, the burden of proof being on the plaintiff.

Voluntary Exposure to Danger

When a person is sued on the grounds that someone has been injured because of a dangerous situation which the person has created or allowed to exist, the defendant may plead "*volenti non fit injuris*" which means, literally, "no harm can befall a willing person," as a successful defence. This Latin maxim means that persons who deliberately expose themselves to conditions which they know might be dangerous has no legal cause of action if they are injured as a consequence. This applies to participants in athletics and sports who get hurt by normal body-contact or out-of-control equipment such as golf balls, base balls, hockey pucks, etc. It applies equally to spectators, provided there was no negligence or malice by the organizers of the spectacle or its participants. Spectators at a road race have no legal claim after being injured by a racing car leaving the track and driving into them. However, grandstands and bleachers should not collapse, and players should not attack spectators with hockey sticks.

Case:

The infant plaintiff, aged six years, was taken by his father to see a hockey game at the defendant's arena. The only available seats were in the front row at one side. There was netting approximately three metres high at the ends of the arena but on the sides only a wooden barrier one metre high. In the course of play, a puck was struck out of the arena and hit the plaintiff in the eye. In an action for damages the plaintiff failed to recover. The court held that the liability of the defendant depended on an implied term of the contract (which the infant plaintiff had assumed to have entered into with the defendant), that the defendant had taken reasonable care to see that the premises were fit for the purpose for which it was used. The trial judge found that:

1. there was no negligence or failure to take customary precautions on the defendant's part; and

2. the plaintiff as a spectator voluntarily undertook the risks incidental to the game.

Case:

A spectator sitting next to the boards was injured when one hockey player attacked another to take away his stick. In an action against the arena proprietors and the offending player the court held the player liable. While spectators assumed the risk of accidents it cannot be properly held that they assumed the risk of injuries resulting directly from negligence or improper conduct on the part of one of the players. Such a player could not properly say that they assumed a risk created by his own wrong-doing.

The same doctrine applies to workers who get hurt in the normal course of their jobs; for example, a domestic worker falling off a step ladder, a lamp burning a photographer employed in a photo studio, a bank teller getting his fingers caught in computing equipment, or an embalmer being injured while using formaldehyde. However, failure to make standard safety equipment available to workers might constitute negligence by the employer.

Contributory Negligence

When persons are injured purely as a result of their own negligence, or through no direct fault of anyone else, they are not entitled to damages from anybody. Since 1924 the courts have had statutory authority to award to an injured person that fraction of the damages which they consider attributable to the other party's fault. In a jury trial, the jury determines the proportion of blame, while it is the judge's function to assess the total damages. Contributory negligence includes the rule of "last opportunity." This rule holds that blame rests chiefly with the person who had the last opportunity to avoid the accident, even if that person did not create the dangerous situation.

Case:

This was an action for obstructing a highway, by means of which obstruction the plaintiff, who was riding along the road, was thrown down from his horse and injured. At the trial it was learned that the defendant, for the purpose of making some repairs to his house, which was close by the roadside at one end of the town, had put up a pole across this part of the road, a free passage being left by another street in the same direction. It was also determined that the plaintiff left a local tavern not far from the place in question at 8 o'clock in the evening, when the street lights were just being put on, but while there was light enough left to discern the obstruction at 100 metres distance. The witness, who proved this, said that if the plaintiff had not been riding fast he would have observed and avoided it. The plaintiff however, did not observe it, but rode against it and fell causing serious injury to himself and his horse. There was no evidence that he was intoxicated at the time. On this evidence the trial judge directed the jury that if a person riding with reasonable and ordinary care could have seen and avoided the obstruction, and if they were satisfied that the plaintiff was riding along the street at a fast pace and without ordinary care, they should find a verdict relinquishing the defendant of any fault, which they accordingly did.

Multiple Defendants

Where two or more defendants acted wrongly, and the victim cannot determine who actually did the damage, the burden of proof shifts to the defendants to prove themselves innocent.

Case:

The plaintiff, in a horse and wagon, was passed by two motorists at a high rate of speed, one on each side. The horse took fright and the plaintiff was injured. Although the defendants acted independently, judgment was given against both for the full amount of the plaintiff's damages.

Case:

Two men engaged in work adjoining a highway each threw a handful of sand at a bus carrying high school students. The sand came through a window of the bus and hit the plaintiff in the eye. It was impossible to say which of the defendants threw the sand that hit the plaintiff. The court held both defendants liable because neither of them could prove that his wrongful act did not cause the injury.

Defamation

A trespass can be committed not only against an individual's goods, land and person, but also on an individual's reputation. Damages can be obtained in a civil action by a person who has been brought into hatred, ridicule, or contempt, whether deliberately or unintentionally, by the publication of false statements. A person can be thus lowered in the esteem of others either by libel or slander. Libel includes those statements which are printed, written, filmed, or recorded in a permanent manner. Slander includes oral statements only.

Slander is not now, nor has it ever been considered to be a criminal offence, and action for it can only be pursued through the civil courts. However, libel was, and still is considered to be a criminal offence as well as a tort.

Libel is held to be a far more serious matter by our courts than is slander, and this is born out by the large amounts of money awarded as compensation to victims of libel compared to those awarded to victims of slander. The reason for this discrepancy is that libel endures longer than slander. That is, slander usually is a one-time event and the only witnesses are those present at the time it occurs. Slander usually occurs in the "heat of the moment" and is often regretted by the perpetrator. Libel, however, will have a large audience, especially if it is printed in newspapers, magazines or books where the readership may number in the hundreds of thousands.

It makes no difference in law whether or not the defamation was intentional. For example, if a writer conjures up a fictitious name for a story's villain and a real-life person can demonstrate that reasonably intelligent people would come to the conclusion that the story was supposed to be a factual account of this person's own felonious activities, then the person will succeed in a libel suit against the author and the publisher. This will be true even if the publisher had gone to the trouble of printing in the forward to the book that "no reference was intended to any person living or dead." Such a case as this actually happened in England when a journalist

working for the Sunday Chronicle wrote a fictitious story about life at Dreppe, a seaside resort in France. Part of his story stated, "There is Artemus Jones with a woman who is not his wife. She must be -- you know - the other thing. Back home he is a church warden and here he haunts the Casino and betrays an unholy delight in the society of female butterflies. It is not surprising how certain of our fellow-countrymen behave when they come abroad." After this story appeared a barrister by the name of Artemus Jones sued for libel. The defence set up by the paper was that the name was made-up solely for the story and that they had no knowledge of the existence of a real Artemus Jones and had in no way intended to harm him. Regardless of this, the court awarded Mr. Jones 5,000 dollars in damages, a goodly sum in those times (1908).

By way of comparison, a similar case in England in 1933 had a somewhat different outcome. The manufacturers of Yo-Yo took out a full page ad in several newspapers showing, in cartoon form, a slightly crazed financier standing in the London Stock Exchange with the following caption, "Take warning of the fate of Mr. Blennerhassett, as worthy a citizen as any that ever ate lobster at Primm's or holed a putt at Walton Heath Golf Course. But Yo-Yo got him and now....!!! He was determined to make the little devil do its stuff. He toiled on at Yo-Yo. Came the dawn and he was still there, dishevelled and wide eyed, with the Yo-Yo string still dangling from his trembling fingers. They tried to part him from it but it was no use and eventually poor Blennerhassett was taken away. Today he is happy in a quiet place in the country; so beware of Yo-Yo which starts as a hobby and ends as a habit." Shortly after this ad appeared a London stockbroker by the name of William Blennerhassett sued for libel, claiming that he had been ridiculed. However, the court dismissed his case because it held that no person whom he had dealings with would seriously believe that he had become deranged or that his mental abilities had been impaired. In other words, the description in the advertisements was so obviously fictitious that no reasonable person would believe it.

Defences Against Slander and Libel

1. Truth. The main contention in any legal suit for defamation is that the plaintiff has suffered injury because of false statements. However, if the defendant can prove that the statements are true, then no action will succeed. But truth is not a valid defence if it can be shown that the statements were printed only for the purpose of ruining the plaintiff and not for the public good. Therefore it is possible to be convicted of criminal libel even if the facts are true, but the motive for printing them was vindictive and vicious.

Persons who believe and repeat false statements they have heard or read cannot escape responsibility because they believed them to be true. Therefore, one who repeats a defamation can be subject to a civil suit just as well as the person who originates the defamation.

2. Absolute Privilege. There are two groups of people who are completely protected from the consequences of their utterances under certain circumstances. The law considers it to be in the best public interest for these people to speak their minds freely without having to fear a possible defamation suit.

The first group consists of members of legislative bodies; such as MLA's and MP's within their legislative chambers. Defamatory statements under these circumstances are said to be made under privileged conditions. The defamed person cannot sue the defamer, nor the publishers of a report which contains an accurate account of the proceedings. This privilege ends outside the confines of the legislative chamber; that is why politicians who are being interviewed in the halls outside the chamber itself sometimes speak to the press much more cautiously than they did inside.

The other group to whom absolute privilege extends consists of the participants in a law suit or other judicial proceedings: namely judges, lawyers, clerks of the court, and witnesses. Again, this privilege ends outside the courtroom itself.

- 3. **Qualified Privilege.** Certain persons are immune from libel suits because they enjoy a qualified privilege. Qualified privilege, which is not quite as complete as absolute privilege, means that persons who are required to comment about others because of the nature of their duties may do so without action being brought against them as long as their comments are fair, and not vicious. Thus, parents are protected when warning their child against consorting with someone whom they suspect of wrongdoing or immorality; as is a person who, in good faith, gives a bad reference on an ex-employee to a prospective employer who requested the reference in confidence.
- 4. **Fair Comment.** Each of us has a right to state our opinions regarding public personalities and matters of general concern. This same right can be extended into the realms of art, literature, drama and sports. The only requirement each of us must follow is that our comments be fair and not a predetermined or vindictive effort to injure the person. In other words, the comment must confine itself to the subject under review and not deal with the personalities of those involved.
- 5. **Privileged Communications.** Communications between husband and wife do not constitute publication of a defamatory statement. Further, neither spouse can be compelled to tell in a court case what was said by the other. Communications between lawyer and client enjoy a similar privilege; therefore, a lawyer need not reveal in court what a client told the lawyer in confidence. There are other classes of people who claim a similar privilege. Doctors, particularly psychoanalysts, claim that the confidence placed in them by their patients should be respected. The clergy claim the same privilege for their parishioners, particularly with regard to matters told to priests in the confessional. While the law does not award privilege in these cases, the courts respect such confidential communications as much as possible.

Nuisance

Nuisances can be classified as private, or public or common. A private nuisance is one which is committed by persons when they do something with their land (real property) which has the effect of interfering with someone else's enjoyment of their property, but without actually trespassing on that person's property. A public or common nuisance violates the rights of the community in general. The party responsible for committing this type of nuisance can be prosecuted under the criminal law and can also be sued by any person affected.

It used to be that trespass and nuisance were considered in law, to be one and the same. However, with the passage of time and many cases to serve as examples, a distinction has been made between the two. Trespass involves a person actually entering onto another person's property. Nuisance involves a person sending something to interfere with other persons use of their property. The manner in which this interference occurs, could take the form of noise, smell, smoke, water, dirt, dust, chemicals, vibrations, radio transmissions, electronic interference, or behavior which can be seen by a neighbor and which the neighbor finds obnoxious or repugnant. It is important that we all take reasonable measures to prevent our actions from annoying others, however, very obnoxious things will constitute nuisances no matter how carefully one tries to control them.

Case:

The defendants operated a tobacco factory near the plaintiff's land. They took great care but nevertheless nauseating fumes constantly disturbed the plaintiff. The court held that what causes material discomfort and annoyance for the ordinary purposes of life to a man's property is to be restrained, although the evidence does not go to the length of proving that health is in danger. An arbitrary standard cannot be set up which is applicable to all localities. There is a local standard which will be invoked as one of the circumstances in deciding whether a nuisance exists. Here the facts constitute a legal nuisance.

Case:

The defendants carried on extensive reconstruction of their building near the plaintiff's hotel and, as a result of the noise and dust, she lost considerable clientele. She sued the defendant for nuisance. The defendants claimed that they were reasonably using their land in reconstructing their building and that, therefore, no action for nuisance should succeed. The court held that, in respect of operations such as demolition and construction, as long as they are carried out with reasonable skill and steps are taken to ensure that no undue inconvenience is caused to neighbors, whether from noise, dust, or other reasons, the neighbors must put up with it.

Here the operations themselves were a reasonable use of the land, but the actual demolition was carried out without due regard to neighbors, and the noise and dust levels overstepped the mark of "reasonableness." The plaintiff suffered from these excesses and so she can recover from the defendants.

As can be seen from the preceding case, the law of nuisance centers around the use of land. The law tries to ensure that people can have quiet enjoyment of their property. But this does not mean that one person can deny others normal enjoyment of their property, that is, the parties have mutual rights and the courts have generally tried to apply a rule of "reasonable use" to mediate disputes. Each of us must put up with some disagreeable or loathsome characteristics of our neighbors, but when the disagreeableness becomes extreme we can take court action to prevent its further occurrence.

Case:

The town of Collingwood, Ontario established a garbage dump near Mr. Plater's farm where they burned large amounts of garbage, causing offensive smells and smoke. Mr. Plater claimed that the smoke damaged his cucumber crop and that his tomato crop was damaged by many seagulls attracted to the area by the dump. Mr. Plater lived in a rural area where no reasonable resident could be expected to put up with such annoyance and discomfort. The court held that it was quite feasible for the town to dispose of the garbage by sanitary fill and that the method of burning constituted a nuisance. Mr. Plater was awarded damages for his diminished cucumber crop. However, the connection between the gulls and the damaged tomatoes was held to be so remote that damages could not be calculated. The town, therefore, did not have to pay for his tomato loss.

Property owners are not usually required by law to remedy a natural nuisance found on their property for the simple reason that they did not create it. If, for example, a noxious odor of sulfur gas is emanating from a natural rock crevice on a person's property, the owner is under no obligation to block it. Or, if large elm trees on a person's property causes leaves to cover a neighbor's lawn in the fall, this is a natural nuisance. However, some communities have enacted laws regarding the control of weeds which compel property owners to cut weeds. If the owner does not cut the weeds, the authorities will do so and charge the cost to the landowner. If a situation exists which is detrimental to the health of the community, the authorities may intervene and eliminate it. An example is destroying the breeding grounds of insects.

A civil suit for nuisance charged against a governmental body or a contractor licensed by government has little chance of success. The reason for this is because the efficient operation of government would be severely handicapped if every disgruntled citizen were allowed to tie up civil servants in lengthy and costly law suits. Therefore, a citizen cannot bring an action demanding that the government act, such as building or repairing a road, nor can a government be liable for not performing an act to the extent a private citizen might like. A citizen can take action for nuisance if a government agency is creating unnecessary annoyance or is careless in allowing water to escape, smell or smoke to pollute, or a similar act that an ordinary citizen could not do.

Defences Against Nuisance

1. Legally Authorized Acts. When a government has authorized a certain activity or use of land which results in a nuisance, no legal suit will succeed provided that all precautions are taken to keep the nuisance to the minimum possible extent.
2. Contributing to the Nuisance. Demonstrating that plaintiffs, by their own actions, made the nuisance more severe will constitute a valid defence. In one such case the plaintiff sued an iron foundry for polluting a stream that ran through his property. At the trial it was learned that the plaintiff had other sources of good water but deliberately allowed his livestock to drink polluted water resulting in his animals becoming sick. The court rejected his claim for damages because he had contributed to his own loss.

3. **Over-Sensitivity.** It is a valid defense to show that the plaintiff has a sensitivity so severe that no one could meet it. A normal life requires some movement and noise. If the demands upon defendants are such that they are asked to tip-toe and whisper through life, they could not enjoy their own property.
4. **Prescription.** If a nuisance has existed for over twenty years, to the knowledge of those around it, the nuisance may have acquired a prescription to continue, provided the nuisance has been constant over those 20 years. It is assumed that if neighbors have accepted the nuisance for that long, they have consented to its presence. This rule would not necessarily apply to people who move into the area and denounce the nuisance immediately. It also would not apply if the nuisance increased during the same time period.

Remedies for Nuisance

Persons who bring an action for nuisance are interested in damages for what they have lost and a prohibition against subsequent loss from the same nuisance. In many cases the most effective remedy is to put an end to the nuisance. If the nuisance is caused only once, then one suit for damages should end the matter. If the nuisance is a perpetual one, then the plaintiff asks the court to order it ended. If the court agrees, it will issue an injunction. An injunction is an order by which a party is ordered to do or refrain from doing a particular thing. If the nuisance appears to be temporary, the court issues a temporary injunction. If the nuisance continues, or appears to be permanent, the court issues a perpetual injunction.

Monetary damages, or money paid to cover a loss, can be obtained over and over for the same nuisance. Thus, if a person suffers from the noise and smoke of a factory, but is unable to get an injunction issued, the plaintiff can continually sue and sue. A situation could arise where a plaintiff could not obtain an injunction but could sue successfully so often that the defendant would have to rectify the problem or go bankrupt from paying damages.

In some cases the plaintiff may attempt to end the nuisance personally. This method is called abatement. This remedy should be employed with extreme caution, however, since it would be easy to overstep one's limited rights and be left open to a suit for trespassing, damage to property, etc. If individuals abate a nuisance themselves they forfeit any rights they may have had of taking the matter to court. If a neighbor refuses to abate a nuisance, and the only means for you to remedy the situation is by going on the neighbor's land, you may do so only by first giving adequate notice of your intentions and by ensuring that no unnecessary damage or disturbance is committed. An exception to this would exist in the case of an emergency. In one such case a man entered onto his neighbor's land in order to extinguish a fire which he believed was a threat to his own property. The court held that this was a justifiable trespass, even though it was proven that the fire was of no real threat to his property. At the time he considered it necessary to protect his property and that was sufficient. In another case, a farmer shot his neighbor's dog which had been chasing and scaring his livestock. He attempted to chase the dog away, but this did not work. As a last measure, he shot the dog. His neighbor sued him for damages claiming the dog was very valuable, but the court held that shooting the dog was the only means of abatement possible and awarded no damages.

The Responsibility of the Occupiers of Premises

The preceding section considered the law related to nuisances emanating from the land onto the land of another person, or causing direct injuries to passers-by. Let us now consider the rules related to dangerous conditions existing on premises which cause injury to persons entering onto those premises. The property owner's degree of responsibility varies, depending on the type of person injured; that is whether the person was on the premises in the capacity of an invitee, a licensee, a trespasser.

Invitees are persons who have come on the premises for the owner's advantage or business interests. They may have been asked to come there by express invitation or by a clear implication that their presence was desired. Such a person might be a shopper in a store, a guest in a theatre, hotel, or restaurant, a deliverer of ordered goods, the mailman, or a repairman who has been called. Social guests do not belong in this category; while they may have received a social invitation they are not an invitee in the technical sense.

Invitees are entitled to have the owner take reasonable care to protect them from unusual hidden dangers which the owner knows of or of which a prudent owner ought to be aware. The owner should eliminate these dangers by having the trouble repaired, railed off, or guarded. Naturally, invitees are expected to take reasonable care, too; if they invoke trouble by going to a chained dog and teasing it or by leaning over the railing of a balcony, they will have only themselves to blame if injured.

Case:

The plaintiff was shopping in a department store and fell because of a depression in the floor which was about twenty centimetres in diameter and more than twenty centimetres deep at its center. The court ruled that the depression was an unusual danger for a woman walking on conventional high-heeled shoes. It was established that responsible store employees had known of the defect for some time and yet it was not repaired.

Case:

The plaintiff ran into a glass door while leaving a large department store. Her injuries were held to be entirely her own fault, since glass doors are not uncommon in such commercial establishments and do not constitute an unusual danger.

A licensee is a person who enters on property with the permission of the owner, either granted expressly, or implied by conduct or common usage. The licensee does not benefit the owner but is tolerated in varying degrees ranging from gladly to reluctantly. An example of the first would be a social guest; of the second, the unsolicited door-to-door salesperson or charity collectors. The latter might, of course, be trespassing if they entered on the property in defiance of posted "No Canvassing" signs.

Licensees are entitled to a warning of unusual hidden dangers which the owner or occupier of the premises actually knows to exist. The occupier is equally liable if an employee, whose responsibility it is to keep the occupier informed of defects, was aware of the danger but failed to report it. For example, a licensee's attention should be drawn to a missing stair, a loose floor board or guard rail, or a deceptively slippery floor.

Case:

Mrs. Fraser came to visit friends who lived in an apartment building. In the lobby, she was injured when her toes caught in a gap in the floor created by two small missing ceramic tiles. The danger was held to be an unusual one. It was also held to be a hidden danger, because it would only have been revealed to the licensee after a close examination of the floor, which she could not be expected to conduct. The Ronsten Co., who owned the building, was held to have constructive knowledge of the defect because tiles had become loose on previous occasions. Failure to replace the tiles, or to warn lobby users of their condition, rendered the owner liable.

Case:

Mr. Nohr visited his friends the Andersons. He sat on their porch rail; it was defective and collapsed under him. The occupants of the house were unaware of the rail's weakness and, therefore, owed no liability to Mr. Nohr in his capacity as licensee.

Trespassers who know that they are not welcome "trespass at their own risk" and have hardly any rights if injured. The only stipulation is that they are not "fair game" and you must not set hidden traps for them. Thus, you may have your grounds patrolled by fierce dogs, but the public should be made aware of them by "beware of the dog" signs; fences must not be secretly electrified; mantraps and spring guns must not be set; barbed wire, spikes, or broken glass on walls must be visible from the outside. Certainly, a trespasser must not be shot at or manhandled except under the most serious provocation.

As was mentioned earlier, the courts give recognition to the innate nature of children by regarding them not as trespassers, but as licensees, when they are attracted on to land by "attractive nuisances"; that is, things or situations which they do not recognize as dangerous, such as building materials, machinery, pits, pools, or other allurements. It is thus the landowner's responsibility to make these hazards inaccessible to children.

Case:

Mr. Jones' nine-year-old son was burned by electricity when he put his hand through the partly open door of a transformer box at a shopping center where he was a customer. There was no warning sign on the transformer and the boy thought it was a mail box. It appeared to be safe but actually concealed danger and it constituted an allurement for children. The city, who owned the box, was held negligent for not affixing a warning sign to the box and for not equipping it with a secure lock.

The Occupiers' Liabilities Act

The common law approach to occupiers' liability has been modified in Alberta by the Occupiers' Liability Act. The Act imposes a common duty of care on occupiers. An occupier is defined in the Act as "a person who is in physical possession of premises, or a person who has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter those premises." Premises are defined broadly in the Act and include land, structures attached to land, some structures which are erected on land but not affixed to it (staging, scaffolding), and some specific moveable structures (trains, ships, and trailers used for residences, shelters or offices). However premises do not include aircraft, cars, and other vehicles or vessels not specifically listed in the Act. The Act also does not apply to highways and private streets.

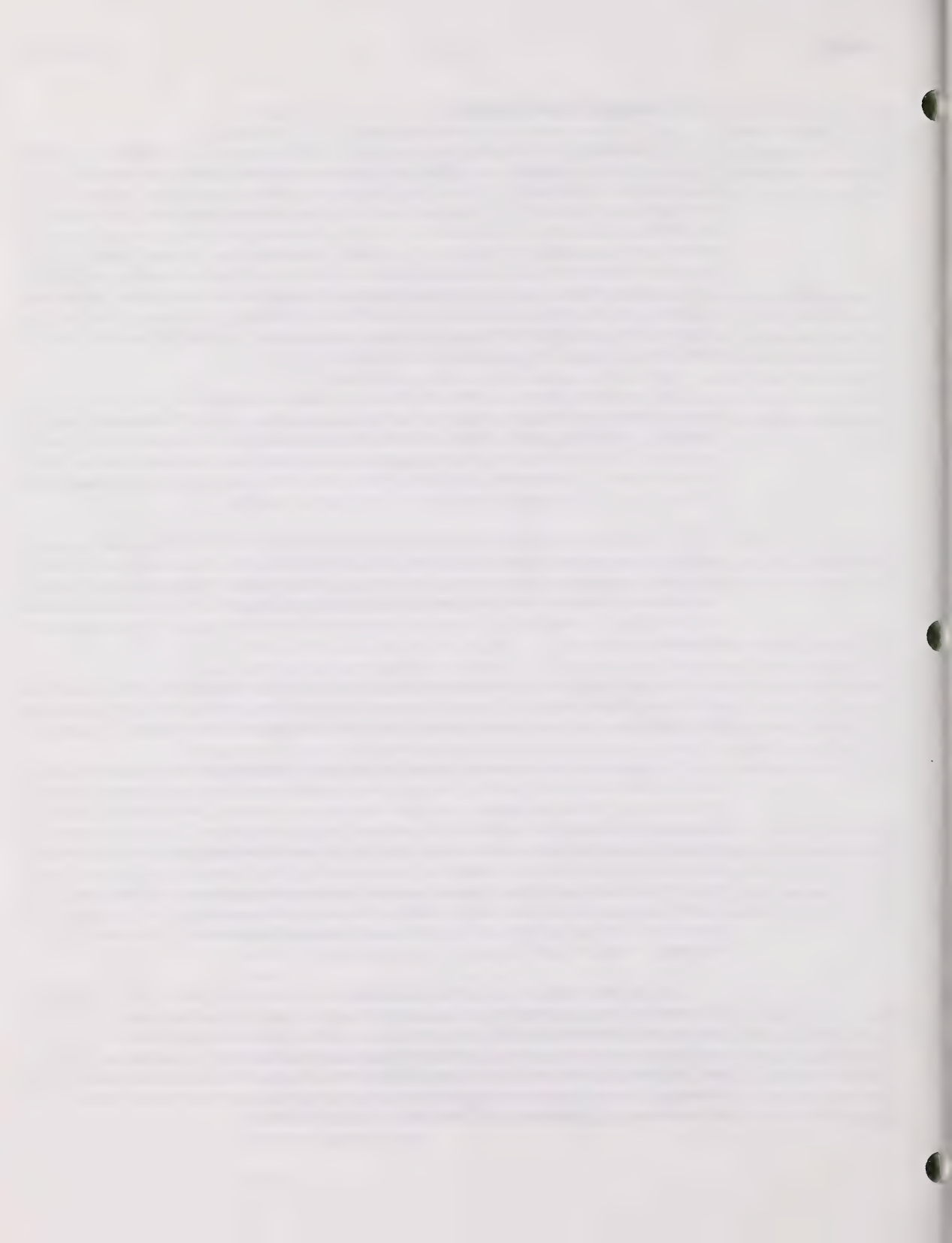
The common duty of care referred to above requires an occupier to take reasonable care to ensure every visitor on his premises will be "reasonably safe in using the premises for the purposes for which he is invited or permitted by law to be there." The definition of visitor includes the categories discussed earlier, with the exception of trespassers. In other words, with the exception of trespassers, the duty of care is the same regardless of the type of visitor.

The common duty of care is restricted to the purposes for which the visitor is permitted or invited to be on the premises. For example, where a customer in a store fell down a basement stairway while looking for someone to pay, the court stated the basement stairway was in a part of the store where the plaintiff was neither invited nor permitted. Accordingly, the occupier was not held to be liable for the customer's injuries.

The Act states that the common duty of care applies with respect to the condition of the premises, the activities on the premises, and the conduct of third parties on the premises, that is, persons other than the occupier and the visitor in question.

The common duty of care is limited by the Act in the case where a visitor willingly accepts risks. In other words, the occupier is **not** bound by the common duty of care where a visitor voluntarily accepts the risks as his own. For example, a recent court decision found the plaintiff, a tennis player, had turned his ankle when he stepped in a depression on the court. The judge found the premises were reasonably safe for the purposes for which they were held out and the plaintiff should have satisfied himself as to the kind of surface being used. Another decision held that a surveyor working on a construction site knew of the danger in working in a particular area of the site and should therefore have avoided it. The construction company was not held liable for the surveyor's injuries.

The Act provides for a further modification of the occupier's duty of care by either an express agreement or an express notice. The courts have stated that the notice or agreement must use express language if disclaiming liability for the negligence of the occupier. For example, a ski lift ticket which disclaimed liability for "all risks of personal injury, loss or damage to property" was held not to be specific enough to exclude the ski resort from liability to a skier injured when struck by a cable when a T-bar blew off its railings in a wind storm.



The occupier must also take "reasonable steps" to bring the notice or agreement to the attention of the visitor. A simple warning is not enough unless it enables the visitor to be reasonably safe.

Exercise 1

Indicate whether each statement is true or false by circling **T** or **F** in the space provided. Be sure to check your answers with the lesson notes.

- | | | |
|---|---|--|
| T | F | 1. The test for negligence most often employed in our courts is that of the reasonable person. |
| T | F | 2. Negligence is an intentional tort. |
| T | F | 3. If it can be shown that the defendant did have a duty of care to the plaintiff, the defendant is not liable for negligence. |
| T | F | 4. In any case the court may apportion the damages in proportion to the degree of fault or negligence by any party. |
| T | F | 5. The burden of proof in a civil case is normally on the person who initiates an action (the plaintiff). |
| T | F | 6. The rule of <i>res ipsa loquitur</i> applies only to cases where the cause of the accident is unexplained. |
| T | F | 7. Where two or more defendants acted wrongly, and the victim cannot determine who actually did the damage, the burden of proof shifts to the plaintiffs to prove themselves innocent. |
| T | F | 8. Slander includes those statements which are printed, written, filmed, or recorded in a permanent manner. |
| T | F | 9. It makes no difference in law whether or not a defamation was intentional. |
| T | F | 10. Trespass and nuisance are still considered to be one and the same. |
| T | F | 11. If a person abates a nuisance personally, the person forfeits any right of taking the matter to court. |
| T | F | 12. A licensee is a person who enters on property with the permission of the owner, either granted expressly, or implied by conduct. |
| T | F | 13. Invitees are entitled to have the property owner take reasonable care to protect them from unusual hidden dangers. |

Exercise 2

Fill in the blank spaces in the following statements; only one word is required for each space.

1. _____ can be described as careless conduct which causes injury or suffering.
2. Proximate cause means that there must be a reasonable relationship between the defendant's conduct and the _____.
3. _____ is the test of being able to reasonably predict the consequences of an action.
4. If the act speaks for itself, the burden is then on the _____ to show that the accident might have happened without negligence on his part.
5. A trespass can be committed not only against someone's goods, land and person, but also on a person's _____.
6. _____ means using only oral statements to injure or harm another person's reputation.
7. A private _____ is one which is committed by a person when doing something which has the effect of interfering with other persons' enjoyment of their property.
8. A property owner is not usually required by law to _____ a natural nuisance found on the owner's property.
9. If a nuisance has existed for over twenty years, to the knowledge of those around it, the nuisance may have acquired a _____.
10. An _____ is a court order by which a party is ordered to do or refrain from doing a particular thing.
11. _____ is the method by which the plaintiff may attempt to end the nuisance himself.
12. An _____ is a person who has come on the premises for the owner's advantage or business interests.
13. Children are not regarded as trespassers, but as _____ when they are allured on to property by attractive nuisances.

Exercise 3

1. What elements must be proven to establish a case in tort law?

(a) _____

(b) _____

(c) _____

(d) _____

2. Briefly define "novus actus interveniens."

.....

[illegible]

3. Briefly define "res ipsa loquitur," describe how it works, and state its principal function.

100% of the respondents reported that they had received information about the program. The majority of respondents (80%) reported that they had received information about the program from the health care provider. The majority of respondents (80%) reported that they had received information about the program from the health care provider.

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4. Briefly define "volenti non fit injuria" and give 3 examples **of your own** of cases where it would apply.

Example 1: _____

Example 2: _____

Example 3: _____

5. Explain the rule of "last opportunity."

6. Briefly explain why libel is held to be a far more serious matter by the courts than is slander.

7. Give five examples of people who would be classified as an invitee.

- (a)

- (b)

- (c)

- (d)

- (e)

Exercise 4

1. The plaintiff, a six year old child, had attended a hockey game with his father. They sat in the front row, near the end of the ice. There was a high net along the end of the ice behind the goal, but the net did not extend all the way around the side. In front of the plaintiff was only a board fence one metre high. A puck struck by a player flew over the board and hit the plaintiff, causing a serious cut to the head. The plaintiff sued for damages. The defence based its position upon the principle of *volenti non fit injuria*. The plaintiff contended the net should have extended further around the rink. Do you think the plaintiff will win his suit? Explain.

2. Jones was engaged to be married. The father of his fiancée was told by Kline that Jones was already married. The father cancelled the wedding until the matter could be cleared up. What legal action could Jones take against Kline and would he be likely to succeed?

3. A building contractor who was erecting new homes on the top of a hill cleared away so much vegetation, including trees, that the first heavy rains caused large amounts of mud and water to sweep down the hill and cover the property of homeowners below. They sued for nuisance. Would such a suit be likely to succeed? Explain.

4. The owner of land had some bushes that grew on his land which produced berries that were non-edible and harmful to anyone who might eat them. Some of the neighborhood children thought they looked good and ate them, becoming very ill. The defendant based his case upon the fact that the children were trespassing. What do you think the basis of the plaintiff's claim would be?

Who do you think will win the case? Explain.

5. Class each of the following as a licensee, invitee, or trespasser. Give reasons for your choice.

- (a) Children enter a construction site to watch some workmen operate heavy equipment.

- (b) A stranger approaches your house to ask for directions.

- (c) A neighbor regularly stops in for coffee, even though you don't enjoy his or her presence.

- (d) A person enters a store not to buy something but to get change for a parking meter. However, he is often a customer of the store.

- (e) A motorist uses the washroom of a service station.

7. Consider whether the following would constitute a nuisance. Explain your answers.

(a) A do-it-yourselfer operates a band-saw in his garage during the evening hours. This interferes with television reception in his neighborhood.

(b) A sump pump hose in one house dumps water near the property line of the next house. The water soaks in the ground, then runs under the neighbor's driveway, eventually causing the driveway to sink.

(c) Children at recess at a public school create so much noise it disturbs some residents in the surrounding neighborhood.

Consider whether the following would constitute a nuisance. Explain your answer. (a) A dog that barks incessantly at night in its neighborhood.

(b) A dog that barks incessantly at night in its neighborhood.

(c) A dog that barks incessantly at night in its neighborhood.

(d) A dog that barks incessantly at night in its neighborhood.

(e) A dog that barks incessantly at night in its neighborhood.

(f) A dog that barks incessantly at night in its neighborhood.

(g) A dog that barks incessantly at night in its neighborhood.

(h) A dog that barks incessantly at night in its neighborhood.

(i) A dog that barks incessantly at night in its neighborhood.

(j) A dog that barks incessantly at night in its neighborhood.

(k) A dog that barks incessantly at night in its neighborhood.

(l) A dog that barks incessantly at night in its neighborhood.

(m) A dog that barks incessantly at night in its neighborhood.

(n) A dog that barks incessantly at night in its neighborhood.

(o) A dog that barks incessantly at night in its neighborhood.

(p) A dog that barks incessantly at night in its neighborhood.

(q) A dog that barks incessantly at night in its neighborhood.

(r) A dog that barks incessantly at night in its neighborhood.

(s) A dog that barks incessantly at night in its neighborhood.

(t) A dog that barks incessantly at night in its neighborhood.

(u) A dog that barks incessantly at night in its neighborhood.

(v) A dog that barks incessantly at night in its neighborhood.

(w) A dog that barks incessantly at night in its neighborhood.

(x) A dog that barks incessantly at night in its neighborhood.

(y) A dog that barks incessantly at night in its neighborhood.

(z) A dog that barks incessantly at night in its neighborhood.

(aa) A dog that barks incessantly at night in its neighborhood.

(ab) A dog that barks incessantly at night in its neighborhood.

(ac) A dog that barks incessantly at night in its neighborhood.

(ad) A dog that barks incessantly at night in its neighborhood.

